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FACTS & FINDINGS

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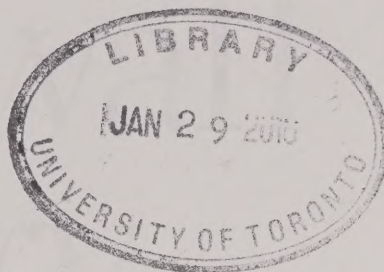
VOLUME 3

VOLUME 4

The Honourable G. Normand Glaude
Commissioner



Ontario



December 14, 2009

The Honourable Chris Bentley
Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON
M5G 2K1

Dear Mr. Attorney,

Re: Report of the Cornwall Public Inquiry

I am pleased to deliver to you my report in four volumes, in both English and French, as required under the terms of the Order-in-Council creating this Inquiry.

The first volume includes findings from my investigation into the institutional response of the justice system and other public institutions, in relation to allegations of historical abuse of young people in the Cornwall area. It also provides recommendations directed at improvements of response in similar circumstances. The second volume includes an account of Phase 2 activities and recommendations to support healing and reconciliation in the future. The third volume provides a summary of informal, non-evidentiary testimony. The fourth volume is an executive summary of volumes one and two of this Report.

It has been an honour to serve as Commissioner.

Yours truly,

A handwritten signature in dark ink, appearing to read "G. Normand Glaude".

The Honourable G. Normand Glaude
Commissioner

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Commissioner



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Acknowledgments

As I look over the work accomplished by this Commission, I cannot but be impressed and humbled by the many individuals who dedicated their time, energy, and expertise to the completion of this important mandate.

Beginning with the Judiciary, I am indebted to the advice and encouragement that Associate Chief Justice Dennis O'Connor and former Chief Justice Sidney Linden provided over the course of the Inquiry.

Each and every person who worked with me contributed greatly in their own way, and more importantly, did so as part of a solid team effort that made this sometimes arduous task manageable.

Let me begin with Commission counsel. The extensive public interest work and administrative law experience of lead Commission counsel, Peter Engelmann, together with the solid criminal law experience of Pierre Dumais, permitted Commission counsel to conduct a full and fair investigation and presentation of the evidence to the Commission. Mr. Engelmann and Mr. Dumais were assisted throughout the Inquiry by a team of young, and not so young, lawyers, whose enthusiasm for this work proved contagious. They included, at different times, Simon Ruel, Christine Morris, Raija Pulkkinen, Maya Hamou, Janie Larocque, Mary Simms, Ian Stauffer, Suzanne Sinnamon, Deirdre Harrington, Karen Jones, and Kelly Doctor.

During the course of the Inquiry, we were presented with mountains of documents spanning some forty years and received testimony amounting to hundreds of volumes. All of this testimony had to be summarized and analyzed. This work was directed by Senior Legal Analyst Ronda Bessner, who came to the Inquiry with vast experience and knowledge, having performed pivotal roles in the work of many previous inquiries. Ms. Bessner assisted me in the preparation of the Phase 1 Report. Ms Bessner's experience and wise counsel proved invaluable to me over the course of the Inquiry. She was assisted throughout the Inquiry

by Junior Analysts Deirdre Harrington, Emma Holland, Heather Cross, Rebecca Cutler, and Maryth Yachnin, all of whom have bright futures ahead of them.

Upon my appointment as Commissioner, the first matter at hand was to begin setting up the administrative side of the Commission. I am very indebted to Monique Seguin who, notwithstanding having worked with me in the North East Region for five years, “volunteered” to take a few months away from home and family to get the Inquiry up and running. Those “few months” turned into almost two years of service to the Commission. As Chief Administrative Officer, Ms Seguin worked tirelessly, and, after conferring with Mr. David Henderson, the guru of CAOs for different public inquiries, got the Commission equipped and functioning. Ms Seguin also implemented a mentoring program, permitting the more junior staff to rise to their full potential.

Upon her departure in March of 2007, Lise Kosloski and Anna DeVuono took on Ms Seguin’s responsibilities. Ms Kosloski had been with the Commission since the early days as Executive Assistant/Coordinator of Finance & Administration. Ms DeVuono accepted on very short notice and in difficult times to relocate to Cornwall from Sault Ste. Marie, where she had been serving as the Trial Co-ordinator, Ontario Court of Justice. Ms Kosloski took on the position of Manager Finance and Administration and Ms DeVuono assumed the position of Manager Finance and Operations. The transition was seamless. Together, Ms Kosloski and Ms DeVuono continued to steer the day-to-day functioning of the Commission with enthusiasm and integrity and showed great leadership throughout. Their administrative staff of Joan Bell, Edith Genois, and Lori Loseth worked tirelessly and efficiently under often seemingly impossible deadlines.

With all commissions of inquiry, a competent and effective investigative team is required to complete the background work and to seek out and prepare witnesses to give evidence. John Spice, RCMP Assistant Commissioner, Ethics and Integrity Advisor (retired), and Jack Briscoe, Staff Sergeant (retired), also of the RCMP, provided the leadership to the investigative team. Both were invaluable in providing wise advice on the preparation of often very fragile witnesses, and insight on the workings of police forces. At various times during the Inquiry, their team consisted of, Sergeant Phil Crouch, Superintendent Alex Geddes (retired), and Sergeant Luc Vidal (retired), all of the RCMP.

The work of researchers is often overlooked in the scheme of a public inquiry. Sherri McArthur headed up the Document Management Research team. Ms McArthur saw to the proper electronic disclosure of material to the parties on an ongoing basis, prepared paper copies for the hearings room, and provided timely research briefs for the legal team. Assisting Ms McArthur were Lori Beaudette and Janet George, who, it seemed, with the time they devoted to this project were becoming permanent fixtures in the office.

I thought it important to have the transcripts of the evidence heard at the hearings posted to our website on a daily basis. The court reporting team from International Court Reporting, consisting of Barry Prouse, Sean Prouse, Marc Demers, Mathieu Philippe, Aline Prouse, and Dale Waterman, provided reliable, accurate, and timely copies of transcripts throughout the hearings.

Simultaneous interpretation was expertly provided by Raymond Saint Laurent, Corinne Ardon, Albert Beaudry, and Louise Mercier.

Inside the hearings room, Avolution, under the able direction of Guy Bennett and his assistants James Rail and Will Rose, provided the audiovisual support. John Doyle and the support team from INSINC provided the live streaming services to allow the hearings to be carried to the website, and therefore, to the public. Our webmaster, Djordje Sredojevic, with the assistance of Ljiljana Vuletic, both from Autcon, saw to our “Web needs” and kept the public’s access to the hearings open at all times.

Once in the hearings room, my task was made that much more manageable with the assistance of competent and professional Registrars Louise Mongeon, Julie Gauthier, and Brigitte Beaulne. Aside from dealing with thousands of exhibits, the Registrars saw to the presentation of exhibits on the public screens while the examinations were taking place.

Joan Weinman ably addressed the Commission’s media relations and other communication needs throughout the Inquiry.

The editors, Camilla Blakeley, Stephanie Fysh, Sarah Wight, and Barbara Tessman, who worked under difficult deadlines, must be acknowledged. Their tireless efforts greatly facilitated the finalization of this report.

As well, I wish to recognize Peggy and Ken Parker, Lorraine and Ron Eamon, and Paul Scott, who attended the hearings from the beginning to end. In those few moments when my spirit was waning, I drew courage in seeing these citizens of Cornwall present, along with other private citizens, listening and interested in the workings of the Commission.

Finally, let me speak to the families and friends of all of us, who, in working on this Commission, spent so long away from our loved ones completing this public service. To all of you, I cannot begin to thank you on behalf of the people of Cornwall, the citizens of this great province, and myself for tolerating our long absences away from our homes, our children, and spouses, the missed family gatherings, sport or school activities, curtailed holidays, and the stresses we invariably brought home, all of which you understood.

While some may say those demands come with the territory, I cannot but admire the manner in which all involved in this collaborative effort worked together and endured to help me complete this mandate.

Simply put, “Je grandis a vous connaître.”

Introduction

Background to the Cornwall Public Inquiry

In early 1994, the media began reporting on allegations of historical sexual abuse made by former altar boy David Silmsen against Father Charles MacDonald, a priest in the Diocese of Alexandria-Cornwall. A short time earlier, probation officer Ken Seguin had taken his life before allegations of historical abuse against him were investigated by the police. Mr. Seguin was a friend of Father Charles MacDonald and another alleged abuser of Mr. Silmsen. Mr. Silmsen had reported allegations of abuse against these two men to the Cornwall Police Service (CPS)¹ in December 1992. The media coverage outlined a confidential financial settlement between David Silmsen, the Diocese, and Father MacDonald that resulted in Mr. Silmsen withdrawing his criminal complaint against the priest. This sparked rumours within the community and allegations of a cover-up by local institutions such as the CPS and the Diocese.

In January 1994, the Ottawa Police Service briefly examined the investigation the CPS had conducted of Father Charles MacDonald. It recommended that a thorough reinvestigation of the case be done by another police force.

Beginning in February 1994, the Ontario Provincial Police (OPP) investigated the allegations made by David Silmsen but laid no charges. In early 1995, as a result of the OPP investigation of the settlement, Malcolm MacDonald was charged with attempt to obstruct justice. Mr. MacDonald was the lawyer who had represented Father MacDonald on the settlement. Nobody else involved with

1. On October 27, 2000, the Cornwall Police Service (CPS) became the Cornwall Community Police Service (CCPS). Accordingly, in this Report I have referred to the organization as the CPS with respect to matters pre-dating October 27, 2000, and as the CCPS with respect to matters after this date.

the settlement was charged. When Malcolm MacDonald pleaded guilty to the charge, he was granted an absolute discharge. Following this, more alleged victims of Father MacDonald came forward, and in 1996 he was charged in relation to allegations of historical sexual abuse.

Perry Dunlop, a Constable with the CPS, began conducting an off-duty investigation into allegations of sexual abuse in June 1996, in part to support a multi-million dollar lawsuit against the CPS and others. Almost three years earlier, in the fall of 1993, Constable Dunlop had provided a copy of David Silmser's allegations against his former priest, Father MacDonald, as well as allegations against his former probation officer, Ken Seguin, to the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS) after he found out that the CPS had terminated its investigation of David Silmser's complaint.

In 1994, Constable Dunlop was charged under the *Police Services Act* for, among other things, providing Mr. Silmser's statement to the CAS. The charges against Constable Dunlop were later stayed, but his relationship with the CPS was forever changed. From 1994 onward, Constable Dunlop's difficulties with the CPS and his contacts with a number of alleged victims were widely reported in the media and well known in the community.

Constable Dunlop continued his private investigation of sexual abuse against young people. In December 1996, his lawyer, Charles Bourgeois, delivered some of the investigative work they had done to Chief Julian Fantino of the London Police Service. Chief Fantino turned these documents over to the OPP in February 1997. The Fantino Brief contained a number of individual complaints about sexual abuse as well as a claim that there was an organized group of powerful people within the community who were perpetrating and covering up allegations of abuse. These individuals were teachers, probation officers, police officers, a Crown attorney, priests, and other Church officials.

In the spring of 1997, the OPP began its "Project Truth" investigation. Its purpose was to examine the contents of the Fantino Brief and investigate the allegations of child sexual abuse and related criminal activity contained therein. At least sixty-nine alleged victims came forward, and fifteen men were eventually charged. Issues soon arose regarding the Project Truth investigation and the prosecutions. Only one person arrested as a result of Project Truth was convicted and a handful were found not guilty. Many cases did not proceed to a full trial on the merits for a variety of reasons: some elderly suspects had died or were too sick to proceed; in some cases the charges were withdrawn; and in others the trials were stayed for either delay or non-disclosure of evidence. Criticism was levelled at the OPP investigation by MPP Garry Guzzo, Constable Dunlop and his wife, and others. There continued to be widespread media interest.

Throughout the 1990s, allegations began to surface about cover-ups by the CPS or by the Diocese of other complaints of sexual abuse. In one of these cases, the alleged perpetrator was the son of a former CPS police chief. In another, the victim made it publicly known that the Diocese had transferred the priest who had abused him to another parish rather than properly dealing with the complaint. In yet another case, the alleged victim complained that neither the CPS nor the CAS had investigated her allegations of abuse against a former CAS worker and group home staff.

These cases, along with the number of alleged victims uncovered by Project Truth, suggested that there was a serious problem of sexual abuse in the community, and more particularly, a problem with the way that public institutions handled, investigated, and prosecuted complaints of abuse. Stories began to circulate attributing these problems to a massive criminal conspiracy.

In 2000, Mr. Guzzo called for a public inquiry to look into the circumstances surrounding allegations of abuse of young people in Cornwall and, in particular, the response of the police and other institutions to it. Segments of the community of Cornwall joined in, and thousands of citizens from the Cornwall area petitioned the government to inquire into the issues. It was the work of a coalition of individuals and groups that resulted in the Order-in-Council dated April 14, 2005, which established this Inquiry.

The preamble to the Order-in-Council sets out the general context for the Cornwall Public Inquiry:²

Whereas allegations of abuse of young people have surrounded the City of Cornwall and its citizens for many years. The police investigations and criminal prosecutions relating to these allegations have concluded. Community members have indicated that a public inquiry will encourage individual and community healing ...

As the hearings began, I heard submissions that the events alleged to have occurred in Cornwall had given rise to a great deal of rumour and innuendo and that it was difficult for the community to distinguish fact from fiction. Complicating this was that some of those said to have been involved with the alleged abuse worked within important public institutions such as the Diocese of Alexandria-Cornwall, boards of education, and the Ministry of Community Safety and Correctional Services.³

2. Appendix A1, Order-in-Council 558/2005, April 14, 2005.

3. During most of the period under review at the Inquiry, the Ministry was known as the Ministry of Correctional Services. It is now the Ministry of Community Safety and Correctional Services (MCSCS). In this Report, I refer to the institution by its name during the period under discussion.

As a result, some members of the community had lost confidence in their public institutions. They were concerned about the existence of a conspiracy and attempts by powerful people in these public institutions to cover up allegations of abuse.

Public inquiries are often convened in the wake of public disillusionment in order to uncover the truth. This Inquiry is no different. The events under investigation involved elements of public controversy and an apparent loss of confidence in public institutions.

The community of Cornwall needed to clear the air with facts. It needed to know how the allegations of abuse had been handled by public institutions. It needed to heal and move forward. This volume and the others that constitute the totality of this Report are written in an effort to address these concerns. The goal here, as in other inquiries, was to find out what happened and what went wrong, and to look at what can be done to avoid similar occurrences in the future.

The Community of Cornwall

When I refer to the community of Cornwall, I am referring to all residents of the city and surrounding areas. Many families have been touched by the events and issues examined here. The community includes victims and alleged victims and their families; perpetrators and alleged perpetrators and their families; leaders, officials, and/or employees of the public institutions whose institutional responses the Inquiry examined; concerned citizens of Cornwall who have called for or otherwise been involved in the Inquiry process either as individuals or in a group capacity; and the media, both formal and informal, which have been reporting on these events for many years.

Early on in the Phase 1 hearings, I heard some evidence on demographic aspects of the City of Cornwall and surrounding area. This evidence was presented during a legal argument on whether or not the Diocese of Alexandria-Cornwall was a public institution and also in the contextual expert evidence given by Robert Fulton.

The focus of the demographic evidence on the “public institution” argument was restricted to the role of the Diocese in the lives of Cornwall area citizens, both historically and today. The citizens of the City of Cornwall and surrounding area are overwhelmingly of the Catholic faith. Approximately two-thirds of the residents identify themselves as Catholics, and the Cornwall area, in particular the United Counties of Stormont, Dundas & Glengarry, has one of the highest proportions of people identifying themselves as religious within its population in the province of Ontario.

The demographic evidence provided by Mr. Fulton was relevant to the community needs assessment that he completed for the CAS in 2003. Its purpose was to provide the CAS with data on the social, demographic, and economic forces that affect children and families in the area and to assess the prevalence of child abuse. Given the specific purpose for which this demographic evidence was prepared, its scope is far from comprehensive. It nonetheless provides some background on the community, albeit limited.

Mr. Fulton's study was a compilation of statistics from Statistics Canada, most from 1991 to 2001. From the data, he identified key indicators related to the need for child protection services. Among them were:

1. The population of the City of Cornwall and the counties of Stormont, Dundas and Glengarry declined from 1986 to 2001.
2. The Cornwall area has a relatively low socio-economic status.⁴
3. Data on three out of four of the most critical adverse outcomes correlated with child abuse—higher rates of accidental death among children, youth suicide, and crime rates—are all significantly higher in Stormont than elsewhere in Ontario.

Mr. Fulton's evidence suggests that statistics like these and others set out in his report indicate that children and youth in the Cornwall area are in greater need of protection than those in most other communities. Statistics and conclusions like these may be difficult to accept, but it must be borne in mind that along with others used by Mr. Fulton in his report to the CAS, they tell only a part of the story of the City of Cornwall. They were used to provide the CAS with a community needs assessment and thereby to assist the agency in estimating the likelihood of harm such as physical or sexual abuse occurring in a community and in determining staffing and programming needs.

Issues related to child sexual abuse are more complex than numbers on a page. The context-setting expert testimony on child sexual abuse that was presented at the Inquiry by Dr. David Wolfe and Dr. Peter Jaffe, among others, and which is discussed in Chapter 2 of this volume, made this abundantly clear. In the time that I spent in Cornwall conducting this Inquiry, I came to know a community that is resilient and striving to promote change. At the end of the day, this is one of its most important features.

4. In 2001, 36.2 percent of Cornwall citizens over twenty did not graduate from high school and only 56.4 percent of youth aged fifteen to twenty-four were still in school.

The Mandate

The Cornwall Public Inquiry was established by the government of Ontario on April 14, 2005, under the *Public Inquiries Act*.⁵ I was appointed Commissioner of this Inquiry by Ontario Attorney General Michael Bryant.

An inquiry's mandate is what shapes its work. The Order-in-Council⁶ establishing this Commission set out the following mandate:

2. The Commission shall inquire into and report on the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to:
 - (a) allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations, and
 - (b) the creation and development of policies and practices that were designed to improve the response to allegations of abuse in order to make recommendations directed to the further improvement of the response in similar circumstances.
3. The Commission shall inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall.
4. The Commission may provide community meetings or other opportunities apart from formal evidentiary hearings for individuals affected by the allegations of historical abuse of young people in the Cornwall area to express their experiences of events and the impact on their lives.

The mandate was divided into two separate parts, Phase 1 and Phase 2. Phase 1 was the fact-finding phase. In general terms, this portion of the mandate required me to inquire into and report on the events surrounding allegations of abuse of young people in Cornwall by examining the response of the justice system and other public institutions to the allegations. I was also required to make recommendations to improve the response in similar circumstances. The work of this Phase of the Inquiry would be conducted by way of evidentiary hearings.

Phase 2 was directed toward the goal of community healing and reconciliation. In Phase 2 we used a variety of additional resources to collect information on key

5. R.S.O. 1990, c. P.41.

6. Appendix A1.

issues that were identified in the hearings and by the community. Among other things, we commissioned research papers, held community meetings and educational workshops, established witness and counselling support programs, and provided the opportunity for individuals to give informal testimony as part of the process of healing.

While Phase 1 and Phase 2 were carried out somewhat simultaneously, the counselling program portion of Phase 2 will continue to operate until January 15, 2010, at which point its continuity will depend on whether or not my recommendations are acted upon.

Preliminary Considerations of Phase 1 of the Inquiry

The Inquiry office space and hearings room were located in the community of Cornwall in a designated historic building, referred to as the “Weave Shed.” I believed it was important that the Inquiry be held in Cornwall so that those most affected by its subject matter would have easy access to our offices and the hearings room.

While not as formal as a court procedure, a public inquiry nonetheless requires its own rules to ensure that it runs smoothly and is thorough, efficient, and fair. In drafting our Rules of Practice and Procedure, I had the benefit of reviewing the rules of other inquiries, and I adapted them to suit our particular circumstances.

Another matter that had to be addressed prior to the start of the Inquiry hearings was that of standing and funding. The Rules of Practice and Procedure set out the criteria for both standing and funding for Phases 1 and 2.⁷ By the end of the Inquiry, I had granted fourteen parties full standing, limited to their interests.⁸ One party had special standing, and four witnesses were granted limited party standing with respect to discrete areas. Participating as parties in the Inquiry were public institutions, community groups, and people who had been investigated and charged with respect to child sexual abuse. Those with limited standing were employees of public institutions and a lawyer who provided independent legal advice to an alleged victim of child sexual abuse. While at times it seemed as though the Inquiry proceedings were slowed by the number of parties, I believe that in the end the participation of and input from each were very helpful to me.

I was empowered by the Rules of Practice and Procedure to make recommendations to the Attorney General regarding funding,⁹ and I assessed applications

7. Appendix B, Rules of Practice and Procedure (amended September 29, 2006), Rules 8 and 58.

8. Appendix D, List of Parties With Standing.

9. Appendix B; also see Appendix A1, s. 10.

for funding as they were presented to me. Several parties convinced me to recommend that they receive funding from the Attorney General, and in all of these cases the Attorney General did in fact approve funding. There were many other issues the Inquiry had to deal with on day-to-day basis. Some of them included disclosure and production matters, issues surrounding confidentiality, a number of motions requiring decisions, and in several instances judicial review applications to the Superior Courts. The process followed during the course of the Inquiry is more fully discussed in Chapter 12 of this volume.

Organization of this Report

Many inquiries are called to examine the circumstances surrounding a single event or incident. The Ipperwash Inquiry, for example, examined the events surrounding the death of Dudley George in Ipperwash Provincial Park in 1995.¹⁰ The Walkerton Inquiry examined the circumstances surrounding the contamination of Walkerton's drinking water system in 2000, which led to seven deaths and to many people becoming ill.¹¹

In contrast, this Inquiry was called to examine a broader subject: the institutional response of the justice system and other public institutions in relation to allegations of historical abuse of young people in the Cornwall area. The time frame this Inquiry examined spanned decades. Many institutions in the Cornwall area were involved in the response to these allegations. The Ministry of Correctional Services, the Cornwall Police Service (CPS), the Ontario Provincial Police (OPP), the Diocese of Alexandria-Cornwall, the Children's Aid Society (CAS) of Stormont, Dundas & Glengarry, a number of school boards, and the Ministry of the Attorney General all played some role in the matters at hand. In some cases, institutions responded jointly or concurrently to allegations. For example, alleged abuse against a young person may trigger a joint investigation by the CAS and a police service, and the Crown may be involved to provide advice on the charge and to conduct the prosecution if charges are laid. In addition, some institutions were involved as both "responding" institutions and as employers of alleged abusers.

Unlike an inquiry that examines one incident, in which the story can often be told in a chronological fashion, the subject matter and timeframe of this Inquiry required a different approach. Chapters were prepared for each involved institution.

10. The Honourable Sidney B. Linden, Commissioner, *Report of the Ipperwash Inquiry* (Toronto: Ministry of the Attorney General, 2007).

11. The Honourable Dennis R. O'Connor, *Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues* (Toronto: Ministry of the Attorney General, 2002).

In several instances, the response to a particular complaint is reviewed in more than one chapter. Thus, while each chapter can be read in isolation, to fully understand the response of all of the institutions involved, it is often necessary to review additional chapters.

The Inquiry began with testimony on child sexual abuse from experts in different disciplines. The purpose of starting with contextual experts was to better educate everyone involved in the Inquiry: members of the public, parties, Commission and party counsel, and me.

The experts included psychologists, social workers, police officers, law professors, and Crown prosecutors. These individuals have spent many years in their respective fields assessing victims of child sexual abuse, investigating and prosecuting child abuse cases, and training child protection workers, police, and other professionals involved in the area of child sexual abuse. They have conducted research on different aspects of child sexual abuse and have numerous publications in journals, books, and manuals. Several have also testified as expert witnesses in civil and criminal proceedings, at coroners' inquests, and before parliamentary committees.

The topics covered at the hearings by the contextual experts included child sexual abuse and the impact of child sexual abuse on victims; the evolution of legislation, law, and legal processes involving children and, in particular, child sexual abuse; the reporting of abuse against children; the child welfare response to allegations of child sexual abuse; child sexual abuse and the institutional and community response to it; social work, with a particular emphasis on community needs assessments; the investigation of sexual offences and historical sexual offences and the training of police officers in this area; the training given at the Ontario Police College; the prosecution of child sexual abuse; canon law; the Church's response to clergy sexual abuse; and the historical background of clergy sexual abuse.

Chapter 2 of this Report begins with an overview of some of the context-setting evidence that was provided by the experts during the Phase 1 hearings. Many of the topics just listed are reviewed in this chapter. The chapter also discusses the lack of awareness, until the 1980s, by the public and by many professionals of the extent of child sexual abuse. The legal rules that perpetuated the erroneous view that child victims are unreliable witnesses—that they have poor memories, lie, and fantasize—are reviewed as well. Also discussed is the lack of accommodation of victims of sexual abuse in the court system, which has had the effect of re-victimizing survivors of abuse who testify in civil and criminal proceedings.

In Chapter 3, I describe the impact of child sexual abuse in the Cornwall area as recounted by a number of victims and alleged victims and their parents,

spouses, and siblings. Over thirty victims and alleged victims testified at the Cornwall Public Inquiry. They testified that when they were children and/or youth in Cornwall they were sexually abused by teachers, foster parents, Catholic priests, probation officers, shop owners, and other members of the community. Some of the victims and alleged victims testified that the abuse began when they were very young children. Others indicated that it began during their adolescence and continued until they were older.

These witnesses painfully discussed the effects of their abuse, which included a continuing lack of trust in authority, failure in school, inability to have intimate relationships, inability to parent their children appropriately, attempts at suicide, addiction to drugs and alcohol, and the fragmentation of their families. The effects have been and continue to be psychological, social, and financial. The impact of this historical child abuse on Cornwall area individuals mirrors much of what was described in the expert testimony by psychologists, social workers, police officers, and legal experts.

As described in Chapter 12, a motion was brought to exclude victims and alleged victims from testifying. I dismissed this motion and the Divisional Court upheld the decision, agreeing that the evidence of victims and alleged victims was important for the Commission to fully investigate the institutional response of the justice system and other public institutions in relation to allegations of historical abuse of young people. Having heard this evidence, I found it was necessary not only in order to fully and properly assess the institutional response of the public institutions but also to fully understand the impact of the abuse and alleged abuse on individuals and their families. Chapter 3 summarizes some of the personal impact, whereas Chapters 5 to 11, on the response of public institutions, describe some of this evidence in an institutional context.

In Chapter 4, I summarize the report and testimony of Dr. Mary Lynn Young. Dr. Young was qualified at the Inquiry as an expert in media analysis. She conducted a study of the print and broadcast media coverage of allegations of historical abuse of young people in the Cornwall area from 1986 until the end of 2004. In her report, Dr. Young concentrated on two main issues: (1) what media content or information may have influenced the institutions in their responses; and (2) how media coverage affected the understanding of the community regarding the social problem identified in Cornwall. Dr. Young examined the trends and changes in the media coverage, focusing on both the nature and the amount of information made available through print and broadcast. Three key frames in the media coverage emerged: police ineffectiveness; the depiction of Perry Dunlop as a “folk hero”; and the presentation of the issues as discrete news events, rather than as a larger, systemic problem. Dr. Young noted, “[T]he citizens of Cornwall could have been better served” had the media quality been better.

Chapters 5 through 11 are dedicated to my examination of the response of a number of public institutions to allegations of historical child sexual abuse. Some of these public institutions, and in particular the Ministry of Correctional Services, the Diocese, and the school boards, employed perpetrators and alleged perpetrators of historical abuse against young people. These chapters examine how the institution as an employer responded to individual cases as well as how it responded systemically through the development and evolution of policies to deal with this issue. The evidence I considered was given by a number of current and former employees and officials of each institution. In addition, I considered the evidence I heard from victims and alleged victims and community context witnesses in my examination of each institution's response. The oral evidence of these witnesses was supplemented by an extensive documentary record.

In Chapter 5, I discuss the response of the Ministry of Correctional Services. This chapter begins with a discussion of problems confronting the Cornwall Probation and Parole Office. Widespread allegations were made by probationers of sexual abuse by two Cornwall probation officers. Allegations against one of these officers came to the attention of the Area Manager in the early 1980s. Staff in the Cornwall office noticed inappropriate conduct by these employees in that office over time.

The response of the Ministry and its employees to allegations of abuse by probationers and former probationers, and to admissions by probation officers of sexual improprieties or other inappropriate conduct, is discussed in detail in this chapter. In recognition of the likelihood that a large number of probationers had been abused, the Ministry, and in particular the Cornwall Probation and Parole Office, developed a protocol in the late 1990s in order to find further victims of this abuse and to support them with counselling and other support services. Issues such as training on male sexual victimization, conflict of interest principles, information sharing, institutional memory, critical incident information management, and audits and reviews of files of probation officers and other Ministry staff are also discussed.

Chapter 6 addresses the response of the Cornwall Police Service (CPS) to allegations of historical sexual abuse of children and young people in the Cornwall area. Investigations of complaints by individuals who alleged that probation officers, members of the clergy, teachers, a federal government employee, childcare workers, and staff under the supervision of the Children's Aid Society abused them in their youth is described and analyzed.

The investigation arising from the complaint of David Silmser is examined in detail. Also examined are the complaints of Jeannette Antoine and others regarding alleged abuse by CAS staff. The fragmented investigations of Earl Landry Jr.,

the son of a former police chief who was investigated over many years, is also addressed in this chapter.

Other issues discussed in this chapter include the training of officers for sexual abuse investigations, and in particular historical child sexual abuse cases; victim support and accommodation; note taking; interviewing; the supervision of officers conducting these investigations; and the importance of sharing information on such cases among CPS officers and with other institutions such as the OPP and the CAS. The issue of notifying employers of alleged perpetrators working for public institutions is also covered in this chapter.

The institutional response of the OPP is addressed in Chapter 7. This chapter examines the investigations conducted by the OPP in 1994 at the request of the CPS. It also examines the Project Truth investigations, a special project launched by the OPP in 1997 in response to allegations of historical sexual abuse made in Cornwall and surrounding areas. Constable Perry Dunlop's interactions with the Project Truth complainants and investigators are explored in some detail. In addition, the chapter begins with a discussion of investigations in the early 1990s that were related to allegations investigated during Project Truth.

Some of the particular investigations discussed in the chapter are the investigation into allegations against Father Charles MacDonald, Jacques Leduc, Jean Luc Leblanc, and allegations of conspiracy. The relationship between the OPP and other institutions such as the Ministry of the Attorney General, the CPS, and the CAS during the course of these investigations is also examined.

Chapter 8 details the institutional response of the Diocese of Alexandria-Cornwall. This chapter begins with an overview of the organizational structure of the Roman Catholic Church and the Diocese within that structure. There is then a review of the expert evidence provided at the Inquiry by Fathers Thomas Doyle and Frank Morrissey. They discussed issues such as the Catholic Church's historical response to sexual abuse by clergy, the 1983 *Code of Canon Law*, the 1992 *From Pain to Hope* report prepared by the Canadian Conference of Catholic Bishops, and the 2001 and 2002 norms. Topics such as the screening and training of members of the clergy on how to address sexual abuse were also canvassed. This evidence was provided for context and background.

A discussion of the policies and protocols developed in the Diocese of Alexandria-Cornwall to address clergy sexual abuse and the evolution of those policies are also included. The balance of the chapter focuses on the institutional response of the Diocese to allegations of sexual misconduct by Fathers Gilles Deslauriers, Carl Stone, Charles MacDonald, Paul Lapierre, Romeo Major, Ken Martin, and other priests.

The institutional response of the CAS is addressed in Chapter 9. This chapter addresses the history and mandate of Children's Aid Societies and in particular,

that of Stormont, Dundas & Glengarry. The development and evolution of a number of policies and protocols are set out. Some of them are interagency protocols entered into with other public institutions, while others are internal to the CAS. Policies governing foster homes and amendments to them are examined. Also examined are the duty to report under the *Child and Family Services Act*, the historical and current use of the Ontario Child Abuse Register, and the Dawson Review, a systematic review of the CAS of Stormont, Dundas & Glengarry that took place in the late 1980s and resulted in large-scale changes to policies and protocols.

The CAS Project Blue investigation, which looked at whether or not children were currently at risk as a result of Father Charles MacDonald's active ministry in the St. Andrew's Parish, is discussed in this chapter. This investigation commenced after Constable Dunlop provided a copy of Mr. Silmsen's statement alleging historical sexual abuse by Father MacDonald.

The chapter also examines the individual allegations of former CAS wards Jeannette Antoine, Cathy Sutherland, Roberta Archambault, and C-14. In addition, it addresses allegations of abuse that arose in regard to the Second Street group home, the Lapensee group home, and the Cieslewicz foster home. The CAS interactions with police agencies in their investigations of Earl Landry Jr. and Jean Luc Leblanc are also addressed. The difficulty for former CAS wards to get access to their own files, the notification of employers of alleged perpetrators, and the reporting or non-reporting of sexual abuse allegations to the police are all covered in this chapter.

Chapter 10 sets out the institutional response of the Upper Canada District School Board and the Catholic District School Board of Eastern Ontario and their predecessor boards with respect to allegations of sexual abuse of children and young people. It also covers the development and evolution of policies and protocols pertaining to how reports of child sexual abuse were handled by these boards and their predecessors.

Father Gilles Deslauriers, Robert Sabourin, and Nelson Barque were employed by school boards that were predecessors to the current Upper Canada District School Board. The circumstances surrounding the employment of these men and allegations reported against them are discussed. The chapter also examines the circumstances surrounding the hiring of Jean Luc Leblanc, an individual convicted of sexual offences against children, as a school bus driver for the Upper Canada District School Board and the actions taken by employees of that board in response to his arrest on additional sexual offences in 1998.

The section on the Catholic District School Board of Eastern Ontario deals with allegations of sexual abuse that were made against teachers Marcel Lalonde and Giff Greggain and principal Lucien Labelle.

The institutional response of the Ministry of the Attorney General is addressed in Chapter 11. This chapter begins with an overview of the responsibilities and roles of Crown attorneys, and specifically the role of Crowns during investigations; a discussion of policies regarding the prosecution of sexual offences; and the evolution of *Criminal Code* provisions relating to the sexual abuse of children and youth.

This chapter also addresses prosecutions, legal opinions, and related work with respect to a number of historical child sexual abuse cases from the early 1980s onward. These include prosecutions, legal opinions and investigative advice from 1993 to 1996 and during the course of the Project Truth. Some of the prosecutions examined in detail are those involving Father Charles MacDonald and other Catholic priests, Jacques Leduc, and Jean Luc Leblanc.

Other prosecutions, opinions, and investigative advice are also addressed, as is the issue of services to assist victims and witnesses. The allocation of resources for special projects and other cases, and the interaction between Crown counsel and police are covered as well.

It is my hope that the facts and findings, together with my recommendations, as described in this Report, will serve to assist the community of Cornwall with its healing and reconciliation. I hope that it will also allow the public institutions examined to effect further positive change and to ensure that they have the trust and confidence of the citizens of Ontario.

Expert Evidence on Child Abuse

Experts From Different Disciplines Testify at the Phase 1 Hearings

The Phase 1 evidentiary hearings at the Cornwall Public Inquiry began with testimony on child sexual abuse from experts in different disciplines. The experts included psychologists, social workers, police officers, law professors, and Crown prosecutors. These individuals have spent many years in their respective fields assessing victims of child sexual abuse, investigating and prosecuting child abuse cases, and training child protection workers, members of the police force, and other professionals involved in the area of child sexual abuse. They have conducted research on different aspects of child sexual abuse and have numerous publications in journals, books, and manuals. Several have also testified as expert witnesses in civil and criminal proceedings, at coroners' inquests, and before parliamentary committees.

The purpose of this chapter is to describe the valuable research and evidence of the experts who testified at the Phase 1 hearings. Some of the topics covered are the incidence of child sexual abuse, the impact of child sexual abuse, the reporting of sexual abuse, and impediments to disclosure by victims of child sexual abuse. Another subject is the lack of awareness by the public and by many professionals, until the 1980s, of the extent of child sexual abuse. The legal rules that perpetuated the erroneous view that child victims are unreliable witnesses—that they have poor memories, lie, and fantasize—are also discussed. The chapter describes as well the lack of accommodation of victims of sexual abuse in the court system, which has had the effect of re-victimizing survivors of abuse who testify in civil and criminal proceedings.

Before discussing the research, assessments, and experience of these different experts, I would like to describe their backgrounds briefly.

Dr. David Wolfe has been a Professor of Psychology and Psychiatry in Canada for over twenty-five years. He is currently a professor at the University of Toronto and prior to that was at the University of Western Ontario, where he taught graduate and undergraduate courses in child sexual abuse, family violence, developmental psychopathology, and professional ethics. Dr. Wolfe was a founding member and Academic Director of the Centre for Research on Violence against Women and Children at the University of Western Ontario.

Dr. Wolfe has worked in private practice as a psychologist. He has also been extensively involved in research on child sexual abuse and has authored or co-authored many books and articles on subjects such as child abuse in community institutions, and the impact of sexual abuse on later development in childhood, adolescence, and adulthood. Dr. Wolfe was Chief Psychologist for the London Children's Aid Society from 1981 to 1995, where he conducted assessments of children.

Dr. Wolfe has testified as an expert in civil and criminal trials on child abuse. Many of these trials involved adults who had been sexually abused during childhood. Also, Dr. Wolfe was appointed by the Ontario Superior Court in 1999 as the consultant to the liquidator for the Christian Brothers of Ireland in Canada in the evaluation of claimants of Mount Cashel who were abused as children in this Newfoundland orphanage. Dr. Wolfe was the 2005 recipient of the Donald O. Hebb Award for distinguished contributions to psychology from the Canadian Psychological Association. He has also received the Outstanding Career Award from the American Professional Society on the Abuse of Children.

Dr. Nicolas Trocmé is a Professor of Social Work at McGill University and is Director of the McGill Centre for Research on Children and Families. He is also Senior Advisor for Research Integration at the Batshaw Youth and Family Centre in Montreal. Prior to that, he was a professor at the University of Toronto in the Faculty of Social Work. Dr. Trocmé was also the founding Director of the Centre for Excellence for Child Welfare at the University of Toronto. He conducted his postdoctoral work at McMaster University at the Child Psychiatry Unit and the Centre for Studies of Children at Risk.

Dr. Trocmé is the recipient of numerous research grants and research contracts. In 1993, he was the principal investigator of the Ontario Incidence Study, which examined rates of reporting of child abuse and neglect. At that time, there was inadequate data on reports of children who had been abused. In 2003, Dr. Trocmé was the principal investigator of a national study on the incidence of reported child abuse and neglect and was involved in follow-up analysis in 2005–2006. His findings were shared with agencies and child protection workers throughout Canada.

Dr. Trocmé has authored or co-authored over sixty peer-reviewed publications, including journal articles and book chapters on different topics

related to child abuse. He has also testified as an expert at coroners' inquests in Ontario.

Detective Wendy Leaver joined the Toronto Police Force in 1975. She worked in the Youth Bureau and subsequently in the Pornography Unit. Detective Leaver was seconded to the federal government from 1981 to 1985 to work with Dr. Robin Badgley, who was responsible for a renowned national study on sexual offences committed on children in Canada. This study is discussed in further detail in this chapter.

Detective Leaver became a sexual assault investigator and later coordinator of the Sex Crimes Unit of the Toronto Police Force. In her fifteen years with the Unit, Detective Leaver has been involved in approximately thirty historical sexual assault investigations, the majority of which have involved institutions such as schools and churches. These cases have predominantly involved male complainants.

Detective Leaver taught a course to first-year medical students at the University of Toronto on profiling pedophiles, and she helped develop a sexual assault and child abuse training course for police officers. She was also involved in the development of a course for the Canadian Forces and the RCMP. She has lectured at the Ontario Police College, the Canadian Police College, and the Law Society of Upper Canada. Detective Leaver's courses on interviewing victims of abuse, victim management, and video-conferencing for vulnerable witnesses have been presented internationally in countries such as Australia, Italy, England, and the Netherlands.

Wendy Harvey has been a Crown prosecutor in British Columbia for over twenty-five years. She specializes in sex crimes and crimes against children. Ms Harvey has made numerous presentations and has given training sessions on sexual abuse to members of the judiciary, prosecutors, police officers, psychologists, medical doctors, and defence lawyers. Ms Harvey was involved in the Jericho Project in British Columbia, in which there were allegations of sexual crimes committed by staff on students at Jericho Hill School for the Blind and the Deaf. She developed an administrative system for criminal cases to ensure that prosecutors have advance notice of trials so that they have time to meet with vulnerable witnesses, such as child victims of abuse, prior to legal proceedings.

Wendy Harvey testified as an expert before a parliamentary committee on the 1988 reforms to the *Criminal Code* and *Canada Evidence Act*: children's evidence and protections to child victims of abuse in criminal proceedings. She has worked with the Policy Centre for Victim Issues on the United Nations Resolution on Guidelines on Treatment of Children, Witnesses, and Victims.

Ms Harvey has written books and many papers on child abuse. Her first book, *So You Have to Go to Court*, was published in 1986 and was geared to child

witnesses. Her second book, *Sexual Offences Against Children in the Criminal Process*, was released in 1993. She also authored a publication entitled “Child Witness Preparation.” Her most recent book, *Trauma, Trials and Transformation*, which she co-authored with psychologists, was published in 2006. It discusses the impact of sex crimes and provides information on the civil and criminal justice system to victims of sexual abuse.

Professor Nicholas Bala, another expert who testified at the Phase 1 hearings, has been a professor in the Faculty of Law at Queen’s University for over twenty-five years. His areas of speciality include children’s law and family law with a focus on child abuse, child witnesses, child welfare law, and children who commit crimes. Professor Bala has published extensively; he has authored or co-authored twelve books and more than a hundred articles and book chapters. His work has been cited by the Supreme Court of Canada and appellate courts in several provinces.

Professor Bala was the lead researcher in a report on the Ontario Child Abuse Register and was a consultant to the Special Advisor on Child Sexual Abuse to the Minister of Health and Welfare Canada, Rix Rogers, in 1989–1990. He also was involved in the Robins Report in 2000, on child sexual abuse in schools. In 2004, Professor Bala was a member of a research team that reviewed the Ontario Office of Child and Family Service Advocacy. He has appeared several times as a witness before parliamentary committees related to issues of child abuse and child witnesses and has made several presentations in continuing education programs for judges, lawyers, doctors, police officers, and psychologists, as well as at law reform and academic conferences. Professor Bala is the principal investigator of an interdisciplinary project on child witnesses funded by the Social Sciences and Humanities Research Council of Canada. Other members on the team include psychology professors and a victim/witness worker.

John Liston, who has a Master of Social Work degree as well as a Master of Business Administration, has been involved with the child welfare system since the late 1960s. He was the Executive Director of the Children’s Aid Society of London & Middlesex for twenty years, where he was responsible for a staff of 400 and an operating budget of \$50 million. Prior to that, he was Assistant Executive Director of the Children’s Aid Society of Metropolitan Toronto and Executive Director of the Big Brothers of Metropolitan Toronto. Mr. Liston has served in a variety of positions at Children’s Aid, including supervisor and front-line worker.

Mr. Liston has been involved in research endeavours of provincial and national significance. He oversaw the project “Protecting Children Is Everyone’s Business.” This research, conducted by a team at the University of Western Ontario, analyzed the reasons for the growing number of children in care and the increase in services

in the late 1990s and early 2000s. Mr. Liston also oversaw the operation of the first agency-based provincial training centre for the London Children's Aid Society, which is also used by other Children's Aid Societies in southwestern Ontario. Furthermore, he has participated on several provincial task forces on Children's Aid Societies. Mr. Liston is an expert in the response of child welfare to allegations of child sexual abuse.

Dr. Peter Jaffe, a psychologist since 1974, is a professor in the Faculty of Education and the Departments of Psychology and Psychiatry at the University of Western Ontario.¹ He has been teaching for over thirty years. Dr. Jaffe is also the Academic Director of the Centre for Research in Violence against Women and Children, which addresses sexual as well as physical abuse.

Dr. Jaffe is also Director Emeritus at the Centre for Children and Families in the Justice System (formerly known as the London Family Court Clinic). He was the Executive Director of the Centre for twenty-six years. The Centre receives over 200 referrals each year of child victims or witnesses, who may ultimately testify in court proceedings. The Centre has also had referrals of adult survivors of historical abuse. Dr. Jaffe has conducted many assessments of child and adult victims of abuse, as well as of pedophiles and other individuals who have sexually abused children. The Centre works collaboratively with Children's Aid, the police, and the Crown Attorney's Office.

Dr. Jaffe has been involved in both quantitative and qualitative research on child abuse. He has a plethora of publications and has co-authored books, chapters, and articles on child abuse and family violence. He has also worked on the development of child witness protocols that focus on making courts more child friendly, to avoid the re-traumatization of children. Dr. Jaffe has appeared as an expert in court proceedings on the impact of sexual abuse on adult survivors, abuse in community institutions, the effects of trauma on memory, as well as on delayed disclosure of sexual abuse.²

Types and Prevalence of Child Sexual Abuse

At the Phase 1 hearings, Dr. David Wolfe gave an overview of the different types of child sexual abuse and described the prevalence of child sexual abuse in Canada. The following World Health Organization definition, in his view, comprehensively captures the nature of child sexual abuse:

1. Dr. Jaffe was also a member of the Phase 2 Advisory Panel.

2. The evidence of Father Francis Morrissey and Father Thomas Doyle will be discussed in Chapter 8, "Institutional Response of the Diocese of Alexandria-Cornwall."

Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.

As Dr. Wolfe explained, children cannot give informed consent to sexual activity, behaviour they do not fully understand. Moreover, the relationship context is critical to understanding the nature of abuse. The abuser may be a family member, caregiver, teacher, or stranger. The World Health Organization definition describes the emotional bond the child may have with the adult perpetrator of the abuse.

A distinction is made by professionals between “intra-familial” and “extra-familial” sexual abuse. As the name suggests, intra-familial abuse is perpetrated by a person who has a family relationship with the child, and includes people who live with the child as well as members of the child’s extended family. Extra-familial abuse refers to situations in which the sexual exploiter is not related to the child; it is important, however, to note that the child victim typically knows the person committing the sexual abuse. Girls are more likely to experience intra-familial child sexual abuse within their home, whereas boys are more likely to become victims of extra-familial sexual abuse.

There are different types of child sexual abuse. Physical sexual abuse includes (1) touching or fondling of the sexual parts of the child’s body, or touching by the child of sexual parts of the older person’s body; (2) sexual kissing; (3) penetration—penile, digital, and with objects—of the vagina, anus, or mouth; and (4) masturbation of the child or the child masturbating the perpetrator. Verbal sexual abuse involves the use of inappropriate sexual language with the child and includes making lewd comments about the child’s body or making obscene phone calls. Exhibitionism and voyeurism is a type of sexual abuse in which the child poses, undresses, or performs in a sexual fashion; it includes exposure of the child to sexual activity and pornographic movies or photographs.

The concept of “grooming” of children by abusers was discussed in the expert testimony. Over time, child victims are gradually introduced by the perpetrator to sexual activities. The grooming process is designed to make the child believe that the sexual activities are “normal” and acceptable.

Pedophilia is sexual orientation toward children. It is designated as a mental disorder in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) of

the American Psychiatric Association.³ “Exclusive pedophiles” are people who are sexually aroused only to children, while “non-exclusive pedophiles” can be sexually aroused to both children and adults. Pedophiles have no common background but are from different socio-economic classes and ethnic groups. Pedophiles can be married, single, and have children. They can have a heterosexual, homosexual, or bisexual orientation. There is one clear risk factor—being male. As Dr. Wolfe explained, almost all pedophiles are male. However, it is important to understand that homosexuality is distinct from pedophilia. Homosexuality is simply “sexual orientation towards the same sex” and does not mean that a male person is sexually aroused to children.

The DSM limits the definition of pedophilia to prepubescent children; that is, children thirteen years old or younger. In Dr. Wolfe’s view, the definition of pedophilia should be extended to children under the age of sixteen.

Important Facts About Child Sexual Abuse

Over 90 percent of child sexual abuse is committed by men. Of the 10 percent of cases in which women commit acts of child sexual abuse, half of these situations also involve a male partner.

The most vulnerable ages for child sexual abuse are between seven and thirteen years old.

There have been two major prevalence studies of child sexual abuse in Canada: the Badgley Survey in 1983, and the Ontario Health Supplement Survey in 1990. The Badgley study found that 17.6 percent of women and 8.2 percent of men reported that they had been victims of child sexual abuse before the age of seventeen. The Ontario Health Supplement Survey, conducted seven years later, concluded that the incidence rate for severe child sexual abuse was 11.1 percent for females and 3.9 percent for males. As Dr. Trocmé said in his evidence, these two major studies confirmed that child sexual abuse is much more widespread than previously believed. Most child sexual abuse—70 to 90 percent—is committed by acquaintances or family members. Child sexual abuse usually occurs within ongoing relationships based on the appearance of protection, nurturing, and trust. Children often do not realize they are victims and repeatedly and voluntarily return to the abuser. They may be offered gifts, alcohol, or money. If an important or prominent member of the community such as a school principal, priest, or teacher instructs them to engage in particular sexual conduct, children may

3. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, DC: American Psychiatric Association, 1994).

believe that this is acceptable behaviour. In fact, victims of child sexual abuse may not know until many years later that they have been abused. Dr. Wolfe explained at the hearings:

With children, they don't really understand what is happening to them in many cases and it's important to keep in mind that because of the nature of the abuse, they're not frightened by it in many cases. It may actually be pleasurable. They may get to do adult things that their friends can't do like drink. So they go back for the attention, for the special relationship, sometimes for the money that they're given, the gifts and the fact that sometimes there's special esteem given if you're the friend of this teacher, if you're the friend of that coach.

Although sexual abuse is prevalent in all socio-economic classes, some children may be particularly at risk. According to experts, offenders prey on vulnerable children. Such situations include a single mother who seeks a positive male role model for her son such as a Big Brother, Boy Scout leader, or priest. Another example is a child who is developmentally delayed. Dr. Jaffe stated that children in trouble with the law, some of whom may have been in custody or in detention facilities, are also at risk of sexual abuse; they are considered "bad kids," and if they disclose the abuse they have little credibility. Perpetrators seek to exert various controls over children—for example, financial and emotional—in order to disempower and intimidate these young people.

There is a high recidivism rate among pedophiles. This means that there is a tendency for these offenders to repeat these sexual acts. According to social science research, pedophiles who are sexually attracted to boys have the highest recidivism rate. The *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association states that the recidivism rate for pedophiles who prefer sexual encounters with boys is twice that of those who have a sexual preference for girls. According to the expert testimony, organizations with the greatest amount of access to children, such as schools and sports organizations, have the greatest risk of attracting pedophiles.

The Impact of Child Sexual Abuse

It was evident from the testimony of the experts and the research studies they presented that child sexual abuse has devastating effects not only during childhood but also long term, throughout adulthood. The impacts are psychological, physical, and financial. As will be discussed in this and the following chapters of the Report, the consequences of child sexual abuse may also be intergenerational.

Physical impacts of child sexual abuse include appetite problems, headaches, vomiting, and sleep problems. Children may also exhibit regressive behaviour such as bedwetting, thumb-sucking, excessive crying, and tantrums. Other effects include self-destructive conduct such as self-inflicting injuries and engaging in risk-taking behaviour.⁴ Children who have been sexually abused may be predisposed to panic attacks and depression and may have difficulty focusing and sustaining their attention. They may exhibit a withdrawal from participation in activities, a decline in school performance, and a lack of interest in socializing with peers. Studies confirm that sexual abuse is connected to “poorer cognitive performance.”⁵

The impact of child sexual abuse depends not only on the severity and chronic nature of the abuse but also on the child’s family and situational characteristics. Dr. Wolfe testified that “the best circumstance for a child ... would be one in which he or she tells what happens, the adults believe them,” an investigation is conducted, and there is support for the child “along the way.” In fact, one of the most significant factors in mitigating the negative effects of child sexual abuse is support from and protective actions by the child’s parents. The response from institutions and from officials in the institutions, such as childcare workers and police officers, is also important in terms of minimizing the adverse impact of the abuse. Dr. Wolfe explained:

So if they are, so to speak, shut down by that system, someone says, “No, this couldn’t have happened or you’re making it up,” or in any way attributes it to the child, then they either will quit saying anything about it or may have even a lot more adjustment problems ...

Children who are believed and supported have the best chance of growing up healthy. The impact of child sexual abuse is generally more serious if the molester is in a position of trust and authority.

Dr. David Wolfe, from the Centre for Addiction and Mental Health at the University of Toronto, along with colleagues from the Department of Psychology at the University of Western Ontario, recently completed a study entitled “Child Abuse in Religiously-Affiliated Institutions: Long-Term Impact on Men’s Mental Health,” published in the journal *Child Abuse and Neglect*.⁶ It describes the

4. See, for example, C. Wekerle and D. Wolfe, “Child Maltreatment,” in *Child Psychopathology*, ed. E.J. Mash and R.A. Barkley (New York: The Guilford Press, 2003), pp. 632–684.

5. *Ibid.*, p. 643.

6. David A. Wolfe, Karen J. Francis, and Anna-Lee Straatman, “Child Abuse in Religiously-Affiliated Institutions: Long-Term Impact on Men’s Mental Health,” *Child Abuse and Neglect: The International Journal*, vol. 30, no. 2 (2006): pp. 205–212.

effects of physical and sexual abuse on male children committed by adults in positions of authority and trust in an institution. The acts of abuse took place between the early 1960s and the late 1980s but were not investigated until the 1990s.

In this study, 63 percent of the men who had been victims of child sexual abuse at this institution reported that they suffered post-traumatic stress disorder, including flashbacks, nightmares, and anxiety attacks. Sixty-five percent of the men had substance abuse problems related to alcohol, and one-third suffered from severe mood disorders such as depression and suicide ideation. These victims of historical abuse have high rates of criminal behaviour: 50 percent have committed property offences, 49 percent substance-related crimes, and 40 percent have a history of violence. According to this study, victims have difficulty maintaining employment, developing intimate relationships, regulating their anger, and trusting others. Moreover, they have “higher lifetime rates of anxiety, alcohol abuse/dependence and anti-social behaviour than non-abused men.”⁷

Dr. Wolfe and his co-researchers state that the long-term effects of child abuse in non-familial settings are connected to the nature of the relationship of the victim with the abuser, the significance of the setting, and the nature and severity of the abuse. The importance of the institution, the role of the perpetrator(s) in the institution or organization, and the community’s response to the allegations of abuse all have an impact on the long-term effects of the abuse on the victim.

Dr. Wolfe and Dr. Jaffe conducted a study entitled “The Impact of Child Abuse in Community Institutions and Organizations: Advancing Professional and Scientific Understanding,” published in the 2003 American Psychological Association journal *Clinical Psychology: Science and Practice*.⁸ The authors identify important factors that contribute to the long-term impact of child sexual abuse committed in community institutions and organizations. The first is the significance and role of the community institution or organization within society.⁹ When an institution is highly valued, as, for example, a religious or educational institution, children may be particularly vulnerable to abuse by individuals associated with that institution. As the authors state, “When a child is abused, efforts at disclosure may be thwarted by the strong community support for the institution, as well as the resources and power of the institution itself.”¹⁰

7. *Ibid.*

8. David A. Wolfe, Peter G. Jaffe, Jennifer L. Jetté, and Samantha E. Poisson, “The Impact of Child Abuse in Community Institutions and Organizations: Advancing Professional and Scientific Understanding,” *Clinical Psychology: Science and Practice*, vol. 10, no. 2 (2003): 179–191.

9. *Ibid.*, p. 182.

10. *Ibid.*, pp. 182–183.

Another important factor is the role of the perpetrator within the institution or organization. Adults and children tend to trust individuals such as teachers, ministers, and Boy Scout leaders because of their expertise and their position within the institution. Parents are “less likely to scrutinize the activities” of these individuals, and “children are more likely to do as they’re told” and not question these authority figures.¹¹ This occurs with religious leaders, often considered representatives of God. Also in sports organizations, as, for example, hockey, a child may “fear that disclosure will jeopardize their aspirations or interfere with their ... opportunities” and may “accommodate themselves to the circumstances.”¹²

An additional factor is the degree and nature of the child’s involvement with the institution. Is the child required to participate in the institution, for example, and how often is he or she involved with the organization?

Moreover, the circumstances surrounding the abusive acts and the post-abuse events have a profound impact on the well-being of the abuse victim. That is, the nature of the sexual acts, whether violence was involved, and the response of the institution to disclosure by the child victim are important. For instance, if a religious or educational institution simply transfers a priest, teacher, or other perpetrator and does not conduct an investigation, the child victim may experience further feelings of self-blame and more serious, long-lasting consequences. Also, the failure of the justice system to respond appropriately when allegations are raised can have a devastating impact on victims of child sexual abuse.

Expert witnesses at the Phase 1 hearings summarized five typical core outcomes for adult victims of child sexual abuse:

1. Difficulty trusting people in different relationships. Victims of abuse may move from one partner to another and may be unable to maintain steady employment.
2. Difficulty controlling their behaviour. They may commit criminal acts or engage in violent behaviour.
3. Poor coping skills, which may lead to alcohol or drug abuse.
4. Anxiety or mood disorders such as depression or suicide ideation.
5. Confusion about their sexual identity or orientation. This is particularly the case for men who have had sexual relations with a male during their childhood and who, consequently, may be uncertain whether they are gay.

11. *Ibid.*, p. 183.

12. *Ibid.*

Another important long-term impact is that abused victims may themselves become perpetrators of child sexual abuse. A further consequence is that when these individuals have children, they often experience serious fears and high anxiety when their sons or daughters attend school, church, or other institutions at which they themselves were abused. There is a great mistrust of these authority figures. As Dr. Jaffe said, such abuse changes many individuals' "whole life trajectory." He referred to current research that indicates that the relationship between child sexual abuse and later mental health problems "is as high as the correlation between smoking and lung cancer."

In Dr. Jaffe's view, the potential impact of abuse is not adequately understood. Dr. Jaffe has interacted with hundreds of survivors of abuse in his career. Common responses by both members of the public and some professionals to adults who disclose child sexual abuse are that their stories are not credible or that the impact is not serious and they should "get on with their life" and put the child abuse behind them:

When they come forward, the first thing they're told, "It didn't happen" or "It couldn't have happened." Once there's a finding that, in fact, it did happen, the next thing people say, "Well, maybe it happened, but it wasn't that bad."

As will be discussed later in this Report and in my recommendations, treatment and counselling services must be readily available and accessible for survivors of historical child abuse. As both the experts and victims and alleged victims of abuse repeatedly said at the Inquiry, treatment and counselling services, particularly for male victims of sexual abuse, are lacking. Moreover, entire families are affected by the abuse, not solely the victim. As Dr. Jaffe stressed, it is important for treatment services to be available for parents as well as non-abused siblings. The London psychologist illustrated the importance of such counselling by referring to interactions he had had with a father whose son had been abused by a religious member in the community:

The reality is you have to see a whole family system, that people are affected, adults.

I talked to a father whose son was abused in their faith community and the impact on him in a profound way, his faith, feeling guilty about all the time he thought his son was having a good time with sort of a fatherly and other male mentor in the community; now realizing that his son was being violated. So there's guilt. There's impact on sibling relationships.

As Dr. Jaffe said, “So when you think about a survivor you have to think about the ripples throughout.”

It is important to note that treatment for victims of sexual abuse is often postponed for fear that discussing the abuse with a counsellor or other professional may taint the victim’s testimony and ultimately negatively affect his or her credibility as a witness. But as Dr. Wolfe said, delaying treatment until the resolution of the criminal process can have serious consequences for victims of abuse such as drug overdoses, suicide, and other self-destructive behaviour.

Difficulties of Disclosure Encountered by Child Victims of Sexual Abuse

The difficulties of disclosure encountered by child victims of sexual abuse are complex. As social scientists explain, disclosure is very difficult for such victims because of their vulnerability and the power imbalance between them and the perpetrators of the abuse.

There are many reasons why child victims of abuse fail to disclose. First, as mentioned, a young child may not in fact know that the sexual behaviour of an authority figure such as a teacher, priest, or foster parent is inappropriate. As Crown Prosecutor Wendy Harvey commented at the hearings, “[E]ventually by the time they do find out that it’s wrong, they are already entrenched in their relationship” with the perpetrator. Second, the child may be threatened by the abuser if he or she discloses the sexual acts to a person in the institution, to a parent, or to another caregiver. “You won’t have a place to live,” “You’ll have to leave your school,” or “I’m going to kill ... your dog” are examples of such threats. Moreover, the child victim may believe that she or he did something wrong. The relationship between the child, the abuser, and the institutional context also affects the victim’s ability to disclose abuse. For example, a child raised in a community in which a religious institution is highly valued is less likely to report that he has been abused by a priest, minister, or other religious figure in that institution. Furthermore, the child victim may believe that disclosure will disrupt or destroy his or her family or community. To complicate the situation, the child may care about his or her abuser. As Wendy Harvey said:

... [T]hey love them and, in fact, it’s like there’s a Dr. Jekyll and Mr. Hyde scenario where you’ve got this loving relationship, whether it be the priest or the teacher or the father or the doctor, whoever it is, who provides so much to that child and actually in many ways helps them with their development in a really positive way, but then there’s this. There’s the fact that the sexual abuse is going on and if only they could have that relationship without this, and they find that the only way that this can be stopped is by telling someone about it or reporting.

Children may not disclose because they feel embarrassed or guilty, or think they will not be believed. They also may not feel safe disclosing the sexual abuse. As Dr. Wolfe stressed, there is “the shroud of silence” that “occurs in childhood around sexuality.” Children may feel guilty or ashamed because they found the sexual acts pleasurable. It is particularly difficult for boys to disclose sexual abuse. As Dr. Jaffe explained, boys are socialized not to speak about their vulnerability: “[B]oys are raised to be strong and silent, to keep feelings to themselves, to be tough guys, to maintain a tough guise.” Another impediment to disclosure by males is that it may raise questions about their sexual orientation; the social stigma of being labelled as gay is clearly a barrier to disclosure.

Wendy Harvey discussed some of the reasons people decide to disclose the abusive acts perpetrated on them. The disclosure may occur one year, several years, or even decades after the sexual abuse:

... [A]n interesting thing [that] happens in the lives of many is that they pass by kind of this invisible threshold where one day, all of a sudden, it seems the right thing to do, to tell. And sometimes this is a year later; sometimes it's 50 years later; and sometimes the person they tell is a therapist and sometimes it's a police officer, a friend or whatever. Depending on who they tell, it may or may not find its way into a police file and there's all kinds of issues around that too.

Survivors may feel that the abuse is something they need to resolve in their lives, or they may be very concerned that their siblings, children, or grandchildren are at risk of being abused by the same perpetrator. The victims may also be in a different setting and consequently feel that their surroundings are such that it is safe to disclose the sexual abuse. They may also want to provide an explanation for their behaviour to their spouses, friends, family members, or the people with whom they work. Victims of abuse may also decide to seek therapy and compensation for the abuse. In some jurisdictions, it is necessary to make a police complaint in order to qualify for Criminal Injuries Compensation. Survivors of abuse may seek acknowledgment of the abuse as well as an apology from the perpetrator.

The Duty to Report Child Abuse

Although a legal duty to report child abuse has existed in Ontario since 1965,¹³ it was rarely reported until the 1980s. The *Child Welfare Act*¹⁴ imposed a legal duty

13. *Child Welfare Act*, S.O. 1965, c. 14.

14. S.O. 1978, c. 85.

on professionals to report child abuse to child welfare authorities. Members of the public also had an obligation under the legislation to report child abuse, although unlike professionals, no fine or other penalty could be imposed on them for failure to report. This statutory duty continued under the Ontario *Child and Family Services Act*¹⁵ and, as will be discussed in this Report, the reporting obligations of professionals have been expanded. But despite this legal duty, sexual abuse cases involving children are often not reported. Even in cases in which professionals have failed to report, legal action has generally not been initiated against them for violating their statutory duty.

Dr. Trocmé explained that prior to the 1980s, child sexual abuse was poorly understood by professionals. When child victims disclosed, professionals either did not believe them or did not know how to respond appropriately. According to Dr. Trocmé, there were problems with identification, detection, and reporting of child sexual abuse.

What were the common responses of institutions and community organizations when children disclosed abuse? The first response to disclosure of abuse was generally disbelief, and the next was to “get rid of the problem.” The term used in some of the literature is “passing the trash.” Throughout Canada and the United States, a common response when a teacher had abused a student was to send the teacher to another school or school district. The abusive acts were not reported and the offender had access to other children. This pattern was common not only in schools but also in churches, recreational clubs, and hockey organizations. Dr. Wolfe gave the example of Mount Cashel, in which Christian Brothers in Newfoundland were moved to other schools, where they continued to abuse children.

In many historical sexual abuse cases, adults saw “bits and pieces about what’s happening” but “didn’t want to believe it.” The initial reaction was “loyalty to your own.” These individuals immediately think about “the consequences to that adult rather than the first response is always the safety and security of children.” Institutions had a culture of turning a “blind eye” to the abuse. And as Dr. Jaffe has observed in his thirty years as a psychologist in the fields of child abuse and domestic violence, “[W]e still have a number of people who operate through denial.” There are professionals in the community, neighbours, and friends, he testified, who believe child abuse is predominantly a societal problem of the past. The responses of such individuals are, “We have help lines. We have shelters. We have Children’s Aid. It’s not really happening any more.” Dr. Jaffe commented:

I used the analogy of 30 kilometres down a 100 kilometre road. I think people are much more aware but ... I think there is still some resistance.

15. S.O. 1984, c. 55.

I think there's a—if you look at any group of professionals, take 100 people at random, you still have some percentage that are in denial. It can't happen any more.

In an institutional setting, it is most difficult to deal with child sexual abuse when it is committed by people with high status in the organization: “[T]he more power that person has, the more influence they have in institutions that are supposed to investigate, the greater the danger there will be a longer denial or potential cover-up around the problem.” “[C]hild abuse is about power,” stressed Dr. Jaffe:

It's about adults' position of power violating children and ultimate power corrupts and if people feel they can get away with it and there's no consequence, then there is a real danger. Some of the communities, if you have multiple perpetrators and they have significant influence, it makes it harder to uncover these cases.

Dr. Jaffe also discussed the reporting of child sexual abuse in religious institutions, places that have historically had a “profound influence” in society. These institutions often lack clear infrastructure to report sexual abuse:

It's often confusing from the outside about responsibilities and authority and when you're trying to talk about abuse within a church, you're talking about disclosing something that happened in your whole community. When someone belongs to a church, it's not just belonging to an institution. It's your very sense of being in the community, your faith. It's that more difficult to disclose it, more difficult to disclose it and be believed. So it's the ultimate institution.

And, he added, “[W]hen you have institutions where the church and the schools are combined ... it's extremely powerful.”

The importance of reporting child sexual abuse was stressed by Dr. Jaffe; “silence” is tantamount to “condoning” the abuse. People may either “watch it happen and don't say anything” or they may be “actively part of a cover-up”:

... [B]ystanders play different roles, active and passive. At the end of the day, the bystanders, whether they're active or passive, have ultimately condoned the behaviour; that it wasn't worth stopping, it wasn't worth reporting, it wasn't worth taking action on.

Condoning such behaviour has very serious consequences: it re-victimizes the child and also “puts future victims in danger of the same perpetrator.” As Dr. Jaffe warned, “Silence is the enemy of child sexual abuse.”

Prosecutor Wendy Harvey testified that only 7 to 10 percent of sex crimes are reported.

False Denials by Perpetrators Versus False Allegations of Sexual Abuse by Children

Although attention is often focused on false allegations of sexual abuse by children, empirical studies have established that the number of children who fabricate sexual abuse is statistically very small. Social scientists have repeatedly stated that false denials by perpetrators are much more common than false allegations by victims of abuse.

Dr. David Finkelhor, an expert on child sexual abuse in the United States, was one of the first social scientists in North America to research and publish studies on child sexual abuse, beginning in the 1970s. In a 1994 article entitled “Current Information on the Scope and Nature of Child Sexual Abuse,”¹⁶ Dr. Finkelhor states that only between 4 and 8 percent of reports of abuse are fabricated, exaggerated, or misinterpreted.¹⁷ This study did not address historical allegations of child sexual abuse by adults.

The conclusion that false reports of child sexual abuse are statistically few was confirmed by Ontario child abuse expert Dr. Nicolas Trocmé. In the *Ontario Incidence Study of Reported Child Abuse and Neglect*,¹⁸ Dr. Trocmé found that very few reports of child abuse are deliberately or maliciously false. According to the results of his research, only 1 percent of reports of child sexual abuse are intentionally false. Although the number of false allegations made by adults in historical abuse cases is unknown, it is also believed to be low.

As both Dr. Trocmé and Professor Bala explained at the hearings, it is important to distinguish between false and unsubstantiated allegations of abuse. An unsubstantiated or unproven allegation means that there is insufficient evidence to establish that the child sexual abuse occurred. As Professor Bala said, it is

16. David Finkelhor, “Current Information on the Scope and Nature of Child Sexual Abuse,” *The Future of Children*, vol. 4, no. 2 (1994): 31–53; David Wolfe, testimony, February 13, 2006, transcript pp. 121–128, February 14, 2006, pp. 49–52.

17. *Ibid.*

18. Nico [Nicolas] Trocmé, Debra McPhee, Kwok Kwan Tam, and Tom Hay, *Ontario Incidence Study of Reported Child Abuse and Neglect* (Toronto: Institute for the Prevention of Child Abuse, 1994).

essential to understand that a criminal acquittal or unsuccessful civil lawsuit “does not mean they were not genuine victims; [i]t simply means there was not enough evidence to establish” the criminal conviction or civil liability. The Queen’s University law professor explained that proving sexual abuse in court proceedings, whether criminal or civil, is very difficult in both current and historical cases of child sexual abuse. As will be discussed, such cases generally lack physical evidence. Sexual abuse of children only infrequently involves penetration and moreover, there is often significant delay in disclosure, with the result that any available physical evidence is not preserved. To compound the problem, there are rarely any witnesses to the abuse. Child sexual abuse and sexual crimes in general are typically committed in private—solely the child victim and the perpetrator are present.

Growing Awareness of Child Sexual Abuse

Until the 1980s, there was very little knowledge in Canada or the United States of the prevalence or impact of child sexual abuse. As Professor Bala wrote in “Child Sexual Abuse Prosecutions in Canada: A Measure of Progress,” “Until the early 1980’s, child sexual abuse was a virtually ignored social phenomenon in Canada.”¹⁹ In the 1950s and 1960s, it was believed that child sexual abuse was rare and in the few number of cases in which it was committed, strangers were the perpetrators. There were few scientifically rigorous studies on child abuse prior to the 1980s.

The women’s movement in the 1970s publicly voiced issues of domestic violence and sexual exploitation. During that decade and into the 1980s, it continued to be believed that sexual abuse was committed primarily either by strangers or by members of the nuclear family (where it was generally considered to be an incestuous problem between fathers and their daughters).

In 1983, Bill C-127 was proclaimed. Prior to that time, laws on sexual abuse focused on penetration. In order to secure a rape conviction, it was necessary to establish that penetration had occurred. Also, until 1983, it was legal for a man to rape his wife. Moreover, there were no offences in the *Criminal Code* for fondling, invitation to sexual touching, or for sexual exploitation of children by individuals in positions of trust. In addition, the language of many of the criminal offences described men as the offenders and women as victims, although boys are often victims of sex crimes and women are sometimes the offenders.

19. Nicholas Bala, “Child Sexual Abuse Prosecutions in Canada: A Measure of Progress,” *Annals of Health Law*, vol. 1 (Chicago: Loyola University Chicago School of Law, 1992), p. 177.

The 1983 reforms repealed the crime of rape and replaced it with sexual assault. Three tiers of sexual assault were introduced in the *Criminal Code*: sexual assault, sexual assault causing bodily harm, and aggravated sexual assault.²⁰ Also the rules relating to the law of recent complaint were abrogated.²¹

But it wasn't until the Badgley Report in 1984 that government officials, Crown prosecutors, police officers, mental health professionals, and the public began to understand the scope of the problem of child sexual abuse in Canada. The Badgley Report, described as "a seminal piece of work," was the "first comprehensive effort in Canada to gain a national" understanding "of the problem of sexual abuse."²² This national empirical study revealed that the incidence of child sexual abuse was much higher than previously understood. It was also one of the first major studies to document the extent to which boys are sexually exploited. Entitled *Sexual Offences Against Children in Canada*, the Badgley Report states:²³

Child sexual abuse is a largely hidden yet pervasive tragedy that has damaged the lives of tens of thousands of Canadian children and youths. For most of them, their needs remain unexpressed and unmet. These silent victims—and there are substantial numbers of them—are often those in greatest need of care and help. Only a few young victims of sexual offences seek assistance from the helping services and there are sharp disparities in the types and adequacy of the services provided for them in different parts of the country.

It found that "about one in two females and one in three males have been victims of one or more unwanted sexual acts."²⁴ These acts included being touched on a

20. Bill C-127, *An Act to Amend the Criminal Code*, 1st Sess., 32nd Parl., 1980–81–82, s. 246.

21. The "recent complaint" rule, developed at common law, permitted counsel in a criminal prosecution to elicit from the complainant or other person a complaint of a sexual assault made at the first reasonable opportunity. The complaint was admitted, not for its truth, but to show consistency and rebut the adverse inference, which the trier of fact would otherwise be invited to draw, that the victim's allegation was untrue. In other words, the law of recent complaint permitted the trier of fact to draw a negative inference against the credibility of the complainant who had not made a complaint immediately after the alleged crime had occurred.

22. Rix Rogers, *Reaching for Solutions: The Summary Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada* (Rogers Report) (Ottawa, ON: National Clearinghouse on Family Violence, Health and Welfare Canada, 1990), p. 10.

23. Robin F. Badgley, *Summary of the Report of the Committee on Sexual Offences Against Children and Youths, appointed by The Minister of Justice & Attorney General of Canada, The Minister of National Health and Welfare Government of Canada* (Badgley Report) (Ottawa: Supply and Services Canada, 1984), p. 1.

24. *Ibid.*

sexual part of the body, being sexually threatened, and being sexually assaulted. About four out of five of these unwanted sexual acts were first committed against these people when they were children or youths. The Report concluded that abuse by strangers was a relatively small problem and that most sexual abuse was committed on children by family members, friends, and acquaintances such as teachers and coaches. As the Badgley Report stated, “[A]bout one in four of the sexual offences against young persons was committed by persons either prominent in the child’s life or by persons to whom the child was particularly vulnerable.”²⁵ It found:²⁶

- the opportunities for sexually abusing the children were greater than ordinary;
- the young victims were particularly vulnerable; and
- these offenders breached the vital position of trust reposed in them due to their special relationship to these young victims.

Not only did the Badgley Report document the extent of child abuse in Canada but it also created awareness of the inadequacies of legislation, policies, and protocols in our country.

The Badgley Report concluded that the sexual assault laws in Canada did not adequately deal with grooming by pedophiles, sexual exploitation that did not involve penetration, or exploitation by people in positions of trust. The Report proposed amendments to the *Criminal Code* to address a broader range of sexual acts. As discussed below, some of the recommendations in the Badgley Report were introduced in the *Criminal Code* and *Canada Evidence Act* in 1988. It recommended that it constitute a criminal offence for an individual to touch any part of a child’s body for a sexual purpose and, similarly, to have a child touch a person for a sexual purpose. It also proposed that the one-year limitation period for the prosecution of certain offences be removed from the *Criminal Code*.

The Badgley Report made significant recommendations about both evidence and procedural law with the objective of removing obstacles to the reception of children’s testimony and accommodating child witnesses testifying in legal proceedings. These included the abolition of the corroboration requirement for the evidence of children and the availability of screens and closed-circuit television for children testifying in court.

In 1988, Bill C-15 became law. These amendments to the *Canada Evidence Act* and the *Criminal Code*, which implemented some of the recommendations

25. *Ibid.*, p. 21.

26. *Ibid.*, pp. 21–22.

in the Badgley Report, represented “major reform” of the federal laws governing the sexual abuse of children.²⁷ Substantial barriers to the reception of children’s evidence were removed. Prior to the 1990s, there had been few successful prosecutions of child sexual assault, in large part because of the obstacles to the reception of children’s evidence, the lack of preparation of sexual assault victims for the court process, and the lack of accommodation of young witnesses by the judicial system.

As a result of Bill C-15, the rule requiring corroboration for children under the age of fourteen was abolished. Children were also given the opportunity in 1988 to affirm in place of swearing on the Bible, an option previously available only to adult witnesses. New provisions were added to the *Criminal Code* to enable child sexual abuse victims under particular circumstances to testify behind a screen or by closed-circuit television. Moreover, a videotape of a child complainant can now be introduced in court for certain criminal sexual offences if particular conditions are satisfied. These reforms, designed to facilitate the testimony of child victims of abuse, were not available to adults who testified in criminal trials about sexual acts committed on them when they were children. A further reform, introduced in 1993, allows a support person in court for a child complainant who testifies in a sexual abuse case.

Bill C-15 also introduced new sexual offences into the *Criminal Code* such as (1) touching for sexual purpose, directly or indirectly, with a part of the body or with an object, any part of the body of a child under fourteen years old; and (2) inviting a child under fourteen to touch for a sexual purpose with an object or part of his/her body, directly or indirectly, the body of an adult. In addition, a sexual exploitation offence was introduced for people in a position of trust or authority with regard to children under the age the eighteen. It also applied to a person with whom a child was in a relationship of dependency.

As Prosecutor Wendy Harvey commented, an understanding was also beginning to emerge at this time that preparation of a child witness for court is very important. She explained:

... [T]he whole point of preparing a child for court is that it is an adult forum you are bringing the child into. You want to prepare them emotionally for something that they’re not used to. Even adults have difficulty testifying in a criminal court and particular difficulty with a very, very unusual experience of being cross-examined and actually having to sit in the same seat and endure it.

27. Nicholas Bala, “Bill C-15: New Protections for Children—New Challenges for Professionals,” *C-15 Forums Keynote Address Series* no. 1, October (Toronto: Institute for the Prevention of Child Abuse, 1988), p. 2.

Victim/witness programs began in the 1980s to provide child witnesses in sexual abuse cases with information about the court process, to provide support persons, and to explain that prosecutors could ask the presiding judge to allow the child to testify behind a screen or by closed-circuit television.

In 1990, the Rogers Report, *Reaching for Solutions*, was released. Rix Rogers, Special Advisor to the Minister of National Health and Welfare, had been asked to conduct a study on the long-range direction of federal initiatives on child sexual abuse. His study involved consultations throughout Canada in urban areas, small communities, and the North,²⁸ in which he met with governmental and non-governmental officials, community-based groups, and front-line service providers. Rix Rogers also met with victims of child sexual abuse and perpetrators.

The Rogers Report confirmed the findings of the Badgley Report regarding the prevalence of child sexual abuse in Canada. The 1990 Report stated that child sexual abuse “affects children in all regions, races, religions and socio-economic classes of our society.”²⁹ It found that about 95 percent of child sexual abusers are male and that although the majority of victims are girls, “many victims are boys.”³⁰ It stated that “incidents involving multiple victims and multiple offenders are becoming more common.”³¹ According to the Rogers Report, “The sexual abuse of children is symptomatic of deeply rooted societal values which tolerate and thereby permit the misuse of power and authority against vulnerable populations, including children.”³²

The Rogers Report proposed several recommendations, which focused on:

- ways to expedite child sexual abuse cases in the court system;
- improved co-ordination of systems and professionals working with child sexual abuse cases;
- improved linkage between the justice, correctional, probation and parole systems;
- use of leverage in the justice system to mandate treatment opportunities;
- full utilization of the provisions of Bill C-15;
- improved consistency in sentencing;
- requirements for education and training of all professionals in the legal system, including judges;
- specialization in the field of investigation and prosecutions;

28. Rogers Report, p. 7.

29. *Ibid.*, p. 13.

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*, p. 15.

- improved use of experts in the court process;
- increased provision of victim witness support services;
- changes to the *Criminal Code* and provincial legislation to improve victim protection;
- changes in the *Criminal Code* to improve supervision and treatment of offenders;
- establishment of screening mechanisms to ensure that those with a history of abuse are not placed in positions of responsibility for children; and
- further research into the characteristics and incidence of false allegations.

Some of the recommendations in the Rogers Report were:³³

That protocols be developed in each local community and rural region to facilitate inter-disciplinary and interjurisdictional co-operation among service providers and various systems in combating child abuse.

That provincial ministries of education, culture and recreation, and social services should continue to fund and plan strategies that will encourage an enhanced liaison between school personnel and community leaders, supported by developmentally appropriate preventive education programs, targeting pre-school through elementary to secondary levels of education. As well, teacher training must regularly deal with child sexual abuse.

That all relevant professional associations be encouraged to develop policy with respect to child abuse and the role their professionals should play in the detection, treatment and prevention of abuse.

That child and youth serving organizations in Canada continue and further develop their efforts to combat child abuse in Canada, including the addition of an official policy to prevent child abuse within their organization. Official policies should set out guidelines related to the selection, training and screening of leaders.

That churches develop policies and procedures for responding appropriately to the problem of child sexual abuse. This includes the articulation of guidelines for church leaders to follow in the event of disclosures, training for appropriate pastoral counselling, procedures to

33. *Ibid.*, pp. 21–22.

follow in the event that church personnel are accused of sexual abuse, and comprehensive screening procedures for clergy and other personnel who work with children and youth.

That all police officers and supervisory personnel receive training in issues related to child sexual abuse and domestic violence; and

That all police forces have officers who specialize in the handling of child sexual abuse cases and who have had specialized multi-disciplinary training in programs of at least one week's duration.

The Report stated that “[t]he criminal justice system across Canada is having great difficulty in coping with the increased number of child sexual abuse cases and at the same time minimizing the trauma which the system has on children.”³⁴ There is a need, concluded the Report, for more programs, resources, training, and protocols to facilitate coordination between different organizations such as the police and child protection services.

In the late 1980s and early 1990s, child sexual abuse in an institutional context started to appear on the radar screens of professionals and members of the public. The 1989 Hughes Inquiry into abuse at Mount Cashel Orphanage in Newfoundland heightened awareness about issues of sexual abuse of boys in institutions. This was followed by the St. George's Cathedral case in Kingston, in which there were allegations of both current and historical abuse by a choir-master, a respected member of the community. Reports started to appear in the media and professional literature about victims of child sexual abuse in residential schools as well as Ontario training schools such as Grandview, St. Joseph's Training School, and St. John's Training School.

The Hughes Inquiry into institutional abuse resulted in greater awareness in the legal community that adult victims of child sexual abuse often have criminal records, substance abuse problems, and high unemployment rates, and that these factors should not automatically undermine their credibility.

Mount Cashel was “shocking” in that clergy, individuals in positions of trust and authority, had abused children, the abuse was “wide-scale,” and the consequences to the victims were very serious. There was recognition in the late 1980s of the need to develop protocols to address child abuse in institutions serving youth such as schools, religious institutions, and volunteer organizations.

Another case that raised public and professional awareness in Ontario was Project Guardian. In 1993, pornographic videos were discovered in a garbage

34. *Ibid.*

bag near a river in London, Ontario. It soon became evident to the London Police Department that this was a multi-victim, multi-offender case. The London Children's Aid Society worked jointly with the police in the investigation.

Not one of the victims, most of whom were disadvantaged and marginalized youth, came forward on their own to disclose the sexual abuse. Sixty percent of these children had had previous contact with the Children's Aid Society or were in foster care. Recruitment of the child victims involved psychological and financial manipulation such as gifts of sports jerseys and running shoes as well as meals at restaurants. As stated in the 1997 report *Project "Guardian": The Sexual Exploitation of Male Youths in London*,³⁵ "There was a highly successful system of peer recruitment, as well as adult-offered enticements, both of which fostered compliance, secrecy and escalation of involvement in young males lured into homosexual sex trade." Some of the adult perpetrators were "well respected professionals" in the London community.

John Liston, Executive Director of the Children's Aid Society (CAS) of London & Middlesex, stated that his staff was not prepared for a multi-offender, multi-victim investigation. The CAS protocols did not address this type of investigation. Another lesson learned from Project Guardian was the importance of a constructive and positive relationship between the CAS and the police. The importance of information sharing between agencies also became very evident. But as John Liston said, and as will be discussed in this Report, impediments remain with regard to the sharing of information. Mr. Liston argues that various statutory and regulatory provisions need to come into effect (such as Part VIII of the *Child and Family Services Act*) to facilitate information sharing between agencies such as the police, CAS, school boards, health units, and other agencies.

It was learned through Project Guardian that "[t]he dynamics underlying the sexual exploitation of children," particularly male youth, were "not well understood" by professionals. The 1997 report stressed:³⁶

... Specialized education must be offered to professionals who work with youth, so that they are able to identify potential victims, offer assistance to high risk youth, and intervene therapeutically and appropriately to protect victims. Additional training must be offered to police officers and child protection workers who routinely investigate cases of child sexual abuse ...

35. Louise Sas and Pamela Hurley, *Project "Guardian": The Sexual Exploitation of Male Youths in London* (London, ON: London Family Court Clinic, 1997), p. 2.

36. *Ibid.*, p. 181.

The need for public education was also emphasized:³⁷

There is an acute need to provide the public with concrete accurate knowledge regarding the sexual exploitation of children. Concrete examples of high risk victim behaviour, recruitment strategies by offenders, and the negative impact on victims should be offered as part of public presentations so that parents and others are sensitized to the pattern of engagement.

The report stressed that there was the “need for a national strategy to combat child sexual abuse.”³⁸

The Robins Report, entitled *Protecting Our Students*, was released in 2000 and also raised awareness in Ontario about institutional sexual abuse of students in the school system. Sydney Robins, a former judge of the Ontario Court of Appeal, was appointed to conduct a review of incidents involving a teacher in Sault Ste. Marie at the Roman Catholic Separate School Board. All of the victims were females who ranged in age from ten to eighteen years old.³⁹ The conduct of Mr. DeLuca, the teacher, “severely damaged his victims’ physical and emotional well-being and, in some cases, has had a devastating impact on their lives.”⁴⁰

The Robins Report stressed that Mr. DeLuca’s situation “is not unique”:⁴¹

... There are abusive teachers who, like DeLuca, are “opportunistic” sexual predators motivated by power, control and sexual gratification. Some are pedophiles who prefer to have sex with children and have chosen to work in schools so they can better access their targets. Others have “romantic/bad judgment” relationships with students, believing that their conduct is either harmless or is acceptable because the students are said to be doing what they want to do. Still others engage in sexual harassment or insensitive and inappropriate, though not necessarily criminal, conduct. The unhappy reality is that cases of sexual misconduct are more prevalent than the public and the teaching profession may believe.

37. *Ibid.*

38. *Ibid.*, p. 186.

39. Sydney L. Robins, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General, 2000).

40. Sydney L. Robins, *Protecting Our Students: Executive Summary and Recommendations* (2000).

41. *Ibid.*

The Robins Report stated that many instances of sexual misconduct against students are concealed and are not reported. The reported cases of sexual misconduct “represent only the tip of the iceberg.”⁴² Justice Robins explains:⁴³

... Reluctance on the part of teachers to report suspected sexual misconduct by a colleague, intimidation of victims and their parents to prevent or discourage disclosure, failure to act upon disclosures of misconduct, the inadequacy of records documenting complaints made, the transfer of a suspected perpetrator from school to school, the absence of screening procedures on the hiring of new teachers have all been seen, to varying degrees, in both the DeLuca case and in numerous other cases and in the literature documenting sexual misconduct in schools.

Dr. Peter Jaffe was involved in the Robins review and interviewed some of the survivors who were sexually abused by the teacher. He said that although colleagues saw “signs, symptoms, warning signs,” “a conspiracy of silence” existed “throughout the system.” Mr. DeLuca was transferred from school to school and continued to sexually abuse students. When some of the children disclosed the abuse, they were not believed. As Dr. Jaffe testified, this case is a “reminder” of how “one perpetrator can do incredible damage to multiple victims.”

Approach of the Courts to Child Sexual Abuse Cases

After Bill C-15 was proclaimed in 1988, the constitutionality of several of the provisions in the new legislation was challenged. Decisions from the Supreme Court of Canada and appellate courts upheld the constitutionality of the new provisions, stressed the importance of accommodating child witnesses in court, and sought to more broadly admit the evidence of children in legal proceedings.

For example, the Supreme Court in *R. v. L.(D.O.)*⁴⁴ upheld the section introduced into the *Criminal Code*⁴⁵ that permitted a videotaped statement of a child in a sexual assault case to be admitted in criminal proceedings. Moreover, the 1990 Supreme Court of Canada landmark decision of *R. v. Khan*⁴⁶ expanded the

42. *Ibid.*

43. *Ibid.*

44. [1993] 4 S.C.R. 419.

45. *Criminal Code*, s. 715.1.

46. [1990] 2 S.C.R. 531.

circumstances in which the hearsay statements of a child could be admitted in court. In *R. v. B.(G.)*,⁴⁷ Justice Wilson discussed how the judiciary should take a “common sense approach” to the testimony of children. Contradictions in a child’s evidence should not always be given the same effect as similar flaws in the testimony of an adult. The Supreme Court stated:⁴⁸

... While children may not be able to recount precise details and communicate the when and where of an event with exactitude, this does not mean that they have misconceived what happened to them and who did it. In recent years we have adopted a much more benign attitude to children’s evidence, lessening the strict standards of oath taking and corroboration, and I believe that this is a desirable development. The credibility of every witness who testifies before the courts must, of course, be carefully assessed but the standard of the “reasonable adult” is not necessarily appropriate in assessing the credibility of young children.

In another Supreme Court of Canada decision a few years later, Justice McLachlin affirmed this approach to the evidence of children. Adult tests for credibility should not be applied to the evidence of children. As the Court stated, “Since children may experience the world differently from adults, it is hardly surprising that details important to adults, like time and place, may be missing from their recollection.”⁴⁹ Justice McLachlin also discussed in *R. v. W.(R.)* the abolition of the legal requirement that children’s evidence be corroborated and the previous assumption that children’s testimony is always less reliable than the evidence of adults. She warned that “if a court proceeds to discount a child’s evidence automatically, without regard to the circumstances of the particular case, it will have fallen into error.”⁵⁰

Courts also became more receptive to the admissibility of expert evidence in child sexual abuse cases. For example, the Ontario Court of Appeal held in 1989 that a properly qualified expert could give opinion evidence about the behavioural and psychological characteristics of child victims of sexual abuse. Justice Galligan, speaking for the Ontario Court of Appeal, said:⁵¹

47. [1990] 2 S.C.R. 30.

48. *Ibid.*, at 55.

49. *R. v. W.(R.)*, [1992] 2 S.C.R. 122 at 133.

50. *Ibid.*

51. *R. v. F.E.J.* (1990), 53 C.C.C. (3d) 64 (Ont. C.A.) at 72.

I would think that it is probably not generally known that children who have been sexually abused, and have reported it, commonly recant their allegations. Thus, in order for the trial judge in this case to decide whether this child's testimony should have been disbelieved because of the letter, he was entitled to know that recantations are common.

Another landmark case was the Supreme Court of Canada decision *R. v. Levogiannis*,⁵² which upheld the constitutionality of the provision introduced in Bill C-15 that allows child sexual assault victims to testify behind a screen. Justice L'Heureux-Dubé said: "[T]he evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth."⁵³ The court also discussed the re-victimization of child victims in legal proceedings and the low conviction rates in child sexual assault cases. Justice L'Heureux-Dubé wrote:⁵⁴

... [O]ne cannot ignore the fact that, in many instances, the court process is failing children, especially those who have been victims of abuse, who are then subjected to further trauma as participants in the judicial process ... [D]espite the increase in child sexual assault complaints since the early 1980s, the ratio of charge to conviction remains unchanged.

As the Supreme Court stressed, "The plight of children who testify and the role courts must play in ascertaining the truth must not be overlooked ... [C]hildren may require different treatment than adults in the courtroom setting."⁵⁵

In 1993, the *Criminal Code* was amended to prevent accused persons in sexual assault cases from personally cross-examining a child under the age of eighteen.

Gradually, measures were introduced into the judicial system to minimize the trauma to child witnesses in sexual assault cases, with the objective of eliciting the truth. Courtrooms such as the "J" Court in Toronto and the Zebra Centre in Edmonton were constructed to accommodate these child witnesses. Such courtrooms have protective devices such as screens and closed-circuit television to ensure that the child need not see the alleged perpetrator while giving evidence. Children are provided with support persons and counsellors from victim assistance

52. [1993] 4 S.C.R. 475.

53. *Ibid.*, at 483.

54. *Ibid.*

55. *Ibid.*, at 484.

programs. They enter these courtrooms from a special entrance and have designated waiting rooms with snacks, crafts, and other distractions for these young witnesses. As Wendy Harvey explained in her evidence, the name of the Zebra Centre is a metaphor: as adult zebras encircle younger zebras, the stripes confuse predators who seek to attack the younger animals. The Zebra name, she said, is consistent with the theme of adults playing an important role in the protection of children.

But despite the amendments to the *Criminal Code* that provide for protective devices for children, many courtrooms in Canada do not have screens, closed-circuit television, or technology for videotaped testimony. Nor do they have special courtrooms similar to the “J” Court or the court at the Zebra Centre. As Ms Harvey said, a child may be in a courtroom only six or seven feet away from the accused and his supporters. She further noted:

... [T]here are still courthouses and courtrooms in Canada where there is virtually no provision of the videotaping or screens or anything of that nature and, in fact, little room for even support persons to sit.

So those are the challenges. Those are the challenges for the victim. Those are the challenges for this country.

...

Canada is not doing okay because there are many, many areas in Canada and role settings in others where these courthouses are still allowing both the accused and the victim the significant discomfort and distress of not having the physical plant in place ...

New sentencing provisions introduced by Parliament also made it clear that legislators were turning their attention to the seriousness of sexual offences perpetrated on children. A section of the *Criminal Code*⁵⁶ permits the sentencing judge, for prescribed sexual offences on children under fourteen years old, to prohibit the offender (1) from attending a public park or swimming area, daycare centre, school ground, or community centre; (2) from seeking, continuing, or obtaining employment or becoming a volunteer in a position of trust or authority toward persons under fourteen years; or (3) from using a computer system for the purpose of communicating with a child under the age of fourteen years.⁵⁷

56. S. 161.

57. See s. 161(1).

The prohibition may be for life or “for any shorter duration that the court considers desirable.”⁵⁸

In 1996, Bill C-41 came into effect, which codified principles of sentencing. Some of the provisions were geared to sexual assault victims, including children. Section 718.2 of the *Criminal Code* provides a list of aggravating principles that includes:

1. evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim; and⁵⁹
2. evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner or child.⁶⁰

There was also acknowledgment that in order to protect victims and potential victims, some perpetrators need to be under supervision for long periods. In 1997, amendments were added to the *Criminal Code*⁶¹ on dangerous and long-term offenders.

A dangerous offender hearing takes place after the conviction of an accused for sexual assault and other specified offences. For sexual assault offences, there must be a finding by the judge that:⁶²

1. the offender’s conduct in any sexual matter shows a failure to control his or her sexual impulses; and
2. there is a likelihood of his or her causing injury, pain, or other evil to other persons through failure to control his or her sexual impulses.

The mandatory result of a dangerous offender finding is an indeterminate sentence.⁶³

Long-term offender status was introduced as a “middle ground” between an indeterminate sentence and an ordinary fixed-term sentence.⁶⁴ Individuals found to be long-term offenders can be sentenced to a term of imprisonment for a minimum of two years⁶⁵ followed by supervision on conditions for up to ten years.

58. S. 161(2).

59. S. 718.2(iii).

60. S. 718.2(ii).

61. S. 752.

62. *Criminal Code*, s. 753.

63. *Ibid.*

64. Allan Manson, *The Law of Sentencing* (Toronto: Irwin Publishing, 2001), p. 336.

65. *Criminal Code*, s. 753.1(1), (2), (3).

There are three conditions to a long-term offender designation. The court may find a person to be a long-term offender when:⁶⁶

1. it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
2. there is a substantial risk that the offender will reoffend; and
3. there is a reasonable possibility of eventual control of the risk in the community.⁶⁷

Another change in sentencing in recent years has involved the role of the victim. The *Criminal Code* defines a victim as “a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence.”⁶⁸ A victim impact statement that describes the harm and loss to the victim as a result of the offence can be presented to the court for consideration by judges in their determination of the sentence for the accused.⁶⁹ The victim impact statement must be in writing and in a prescribed form.⁷⁰

Further *Criminal Code* amendments introduced in 1999⁷¹ expanded the role of victims in the sentencing process. In the past, it was the Crown Attorney who essentially decided if a victim impact statement would be presented to the sentencing judge. Now the judge is required to permit the victim to read the impact statement in court “or to present the statement in any other manner that the court considers appropriate.”⁷²

66. *Criminal Code*, s. 753.1.

67. According to the *Criminal Code*, the court shall be satisfied there is a substantial risk that the offender will re-offend if:

- (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching), 153 (sexual exploitation), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon), or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted and
- (b) the offender
 - (i) has shown a pattern of repetitive behaviour, or which the offence for which he or she has been convicted forms a part, that shows a likelihood of offender’s causing death or injury to other persons or inflicting severe psychological damage on other persons, or
 - (ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

68. S. 722(4)(a).

69. *Criminal Code*, s. 722(1).

70. *Criminal Code*, s. 722(2)(a).

71. S.C. 1999, c. 25, s. 17(1).

72. *Criminal Code*, s. 722(2.1).

Another aggravating factor in sentencing an accused was added to the *Criminal Code*.⁷³ It stipulates that evidence that the offender in committing the offence abused a person under eighteen years old shall be deemed to be an aggravating circumstance. This provision was introduced in Bill C-2. A discussion of this important legislation follows.

Bill C-2: Attention to Historical Cases of Child Sexual Abuse

In 2006, Parliament and society as a whole began to realize that adult victims of child sexual abuse also needed protection in order to successfully prosecute perpetrators of these offences. Bill C-2 introduced significant amendments to the *Criminal Code*, designed to protect both children and vulnerable adults from sexual abuse and exploitation.⁷⁴ It changed some of the provisions on sentencing for child sexual abuse offences, including a minimum mandatory sentence for specific sexual crimes. It also strengthened child pornography offences and created new crimes such as the sexual exploitation of adolescents and voyeurism. In addition, the legislation offered important protections to adult witnesses of sexual abuse, designed to facilitate the giving of testimony in these cases. The competency rules for children in the *Canada Evidence Act* were also amended.

Before I highlight some of these significant amendments, the preamble of Bill C-2 is reproduced as it identifies the objectives of Parliament in enacting these statutory provisions:

WHEREAS the Parliament of Canada has grave concerns regarding the vulnerability of children to all forms of exploitation, including child pornography, sexual exploitation, abuse and neglect;

WHEREAS Canada, by ratifying the United Nations Convention on the Rights of the Child, has undertaken to protect children from all forms of sexual exploitation and sexual abuse, and has obligations to sign as a signatory to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

WHEREAS the Parliament of Canada wishes to encourage the participation of witnesses in the criminal justice system through the

73. S. 718.2(a)(ii.1).

74. Nicholas Bala, Katherine Duvall-Antonacopoulos, R.C.L Lindsay, Kang Lee, and Victoria Talwar, "Bill C-2: A New Law for Canada's Child Witnesses" (2005), 32 C.R. (6th) 48.

use of protective measures that seek to facilitate the participation of children and other vulnerable witnesses while ensuring that the rights of accused persons are respected;

AND WHEREAS the continuing advancements in the development of new technologies, while having social and economic benefits, facilitate sexual exploitation and breaches of privacy ...

A significant provision introduced to the *Criminal Code*⁷⁵ in 2006 permits an application to be made to the court to allow adult witnesses to testify behind a screen or outside the courtroom by closed-circuit television. There is recognition that adults, particularly in sexual offence cases, may be intimidated by the accused and consequently may have difficulty giving evidence in court. If the judge is of the opinion that this is “necessary to obtain a full and candid account from the witness of the acts complained of,”⁷⁶ he or she will allow the adult to testify behind a screen or by closed-circuit television. It is noteworthy that there were constitutional challenges to this provision, section 486.2 of the *Criminal Code*, within months of its amendment. To date, this provision has been upheld by the courts.

Section 486.2 of the *Criminal Code* was also amended to give children and adults with mental or physical disabilities easier access to closed-circuit television, screens, and support persons while they testify at criminal trials.

Another very important legislative change is that children under the age of fourteen need no longer satisfy the rigid competency rules that previously existed in order to give evidence in court. Pursuant to Bill C-2, there is now a presumption in the *Canada Evidence Act* that children under the age of fourteen have the capacity to testify. Victims and other witnesses under fourteen years old need no longer explain in court abstract concepts such as the oath or the difference between a lie or the truth before they are permitted by a judge to testify. Many of the competency hurdles that prevented children from testifying have now been removed as a result of Bill C-2.

Another significant provision is the new section 153 *Criminal Code* on sexual exploitation. As Wendy Harvey explained in her expert testimony, Bill C-2 expands the criminal offence “so that it goes beyond [a] relationship of dependency ... [I]t opens the door a little bit to embrace other relationships beside the trust/dependency/authority one that the courts have been tackling with over the years.” Section 153(1.2) *Criminal Code* states:

75. S. 486.2(2).

76. *Ibid.*

- (1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including
- (a) the age of the young person;
 - (b) the age difference between the person and the young person;
 - (c) the evolution of the relationship; and
 - (d) the degree of control or influence by the person over the young person.

Bill C-2 introduced minimum penalties for the offence of child sexual exploitation as well as other crimes committed on young people. This prevents the availability of a conditional sentence⁷⁷ for offenders who commit these sexual crimes on children. As mentioned above, Bill C-2 stipulates⁷⁸ that it is an aggravating factor for purposes of sentencing if evidence exists that the offender abused a person under the age of eighteen. Moreover, the following *Criminal Code* section⁷⁹ was added:

When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

As an expert at the Phase 1 hearings said, it is hoped and expected that “[t]he changes in Bill C-2 should both enhance the truth-seeking function of the criminal justice system and reduce the stress on children and other vulnerable witnesses from their involvement in the legal process.”⁸⁰

77. Conditional sentences were introduced by Parliament in 1996. A judge may order that a term of imprisonment of less than two years be served in the community on conditions. Section 742.1 *Criminal Code* states:

742.1. If a person is convicted of an offence, other than a serious personal injury offence as defined in section 752, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more or an offence punishable by a minimum term of imprisonment, and the court imposes a sentence of imprisonment of less than two years and is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2, the court may, for the purpose of supervising the offender’s behaviour in the community, order that the offender serve the sentence in the community, subject to the offender’s compliance with the conditions imposed under section 742.3.

78. See *Criminal Code*, s. 718.2(a)(ii.1).

79. S. 718.01.

80. Bala *et al.*, “Bill C-2: A New Law for Canada’s Child Witnesses,” *supra* n. 74.

Impediments to the Successful Prosecution of Child Abuse Cases

Until the 1980s, few criminal cases of child sexual abuse were successfully prosecuted in Ontario and Canada as a whole. Children's evidence was considered unreliable, there was a limited range of sexual offences in the *Criminal Code* under which offenders could be prosecuted, and children had to overcome significant legal hurdles in order to give evidence in a criminal trial. These are a few of the reasons why child sexual abuse cases either did not proceed or did not result in convictions of accused persons.

A further reason, as discussed, was that the legal system did not accommodate children. Young witnesses who had been abused were required to wait outside courtrooms in close proximity to the offender, as there were no special facilities for children. Also, when children testified, they were compelled to have face-to-face confrontation with the accused, and did not have the protection of a screen or closed-circuit television. Nor were support persons permitted to stay close to children at the witness stand while they testified. Moreover, victim/witness programs to prepare the child for court proceedings did not exist. And it was not until the 1990s that accused persons were prohibited from personally cross-examining a child sexual abuse victim, which had a significant adverse impact on the child's evidence. Cases collapsed due to the inability of the child to complete his or her testimony.

Children were traditionally considered to be unreliable witnesses. As mentioned, it was believed that young people had a tendency to lie and fantasize and that their memories were poor. This was reflected in the psychological literature, in statutes, and in court decisions until the 1980s. There was also little understanding of human memory. Defence lawyers would successfully challenge the credibility of children who were repeatedly abused over a number of years, on grounds that they could not describe in detail each separate incident of sexual abuse. Wendy Harvey discussed in her testimony the concept of script memory:

... [I]f I ask you to describe to me ... how many times have you ever driven to work? So if you drive to work like 200 times a year or so, and I insisted that you've got a pencil and paper in front of you and "I want you to write down every time that you went to work." So you've been going to work for 10 years. That's 2,000 times or so. So why isn't there 2,000 episodes of driving to work on that piece of paper? It's because the memory puts it into a script. And so what you're going to hear and what, chances are, people will write is, "Well, I pick up my briefcase and I would leave the door and I would go to my car and open the garage door and drive my car out."

...

So the same principles apply. Of course they apply when we're talking about a victim of a sex crime. Many of these victims—and it's the very nature of some sex offenders, that these are repeated, ongoing abuses and the result is that a victim will describe that as a script.

...

Now, when this gets into a court of law ... the cross-examination will be of a nature of, well, "Witness, I've done the arithmetic here and you said that this has happened for 10 years and so many times a week, and so my arithmetic tells me that this probably happened about 2,000 times. Is that correct?" "Well, I haven't really done the math." "Two thousand times, that is my arithmetic, and yet, witness, I have counted how many times that you were actually able to describe something that transpired and there's five. There's five times, witness. How could this possibly be that you have been sexually assaulted 2,000 times by this man and you can only tell us five times?" ...

And the trier of fact, the jury, is sitting there and they're going, "Yeah, witness" because they're not thinking about the times of driving to work or the fact that they can't recall the brushing of their teeth or what they had for breakfast, because when we're in a court of law, sometimes it takes on an artificiality, as if the human brain is to operate differently from how it does day to day, and it is convincing at times.

Another impediment, previously discussed, was that before children under fourteen years old were permitted to testify, they were required to pass a competency test. Children needed to demonstrate to the judge that they understood the nature of an oath that involved abstract questioning. It was very difficult for five-, eight-, or even thirteen-year-old witnesses to describe the concept of swearing an oath to a Supreme Being.⁸¹ Also children, unlike adults, were not allowed to solemnly affirm. And significantly, until the 1980s, legal rules necessitated that a child's evidence be corroborated by independent evidence before an accused could be convicted of a crime. This was virtually impossible as child sexual abuse generally occurs in private without other witnesses; only the child and the accused are present. As Detective Wendy Leaver from the Toronto Police Force said, these legal rules created significant obstacles to the successful prosecution of the sexual offenders. The police "knew that the child couldn't make it through the court system" because of the evidentiary requirements.

81. See *R. v. Bannerman* (1966), 48 C.R. 110 (Man. C.A.), aff'd Supreme Court of Canada, [1966] S.C.J. no. 74.

The perception that children were inherently unreliable had ramifications throughout the social and legal systems. When children came forward and reported abusive acts, the response was that they were lying. When Detective Leaver began to investigate sexual offences in the late 1970s and early 1980s, very little was known about child sexual abuse. There was a tendency not to believe children's accounts of sexual abuse. This was reinforced with the emergence of the theory of false memory syndrome, which asserted that children "remembered" or "recalled" acts of sexual abuse that had not actually occurred.

Nor did police officers have training in sexual assault cases. As Detective Leaver said, there was "no specialized training, no skill training in any areas of interviewing, victim management, how to investigate sexual assaults." Investigators often considered sexual crimes against children to be "family matters." Wendy Harvey stated:

... [Y]ou had to convince police that this is a police matter and, in fact—and I expect, with the greatest respect to the police, that there are still remnants of that today where, you know, "Give me something real to investigate. Give me a homicide or give me a robbery," because they still would see that this is not a police matter.

When police interviews were conducted, interviews were not audio or video recorded. Instead, police notebooks were used and the language of the child victim was paraphrased. Moreover, because of their lack of training, police officers often asked suggestive questions, which had an adverse impact on the weight attached to the child's evidence in legal proceedings.

Children were often punished for making allegations against their perpetrators, some of whom were respected community figures such as priests. Young victims of sexual abuse were returned to the institutions at which they had been abused, such as schools, churches, and foster homes. The message to these children and other potential child victims was that sexual abuse should not be disclosed.

Detective Leaver also discussed the limited sexual offences that existed in the *Criminal Code*. For example, vaginal penetration, as mentioned, constituted a criminal act, but not invitations to sexual touching or masturbation. Also, most of the offences were applicable to female but not to male victims, with the result that many young boys "weren't protected by the law." Moreover, there were strict time limitations for the prosecution of some criminal offences; cases needed to be reported and prosecuted within one year. As Detective Leaver commented, research studies have confirmed that "it takes a lot longer than a year for victims to come forward." "Everybody," the police detective said, "was frustrated with the

inability to carry these cases forward.” This assessment was confirmed by Crown Prosecutor Wendy Harvey, who said: “[T]here was clearly a time in Canada history where it was virtually impossible to prove a crime of sexual assault or of a sexual nature against a child.”

There are also particular challenges with multi-victim, multi-offender cases. These cases are complex, burden local resources, and place great strain on the community as a whole. Project Guardian in London and Project Jericho in Prescott are examples of such cases in Ontario. Collaboration between different institutions such as the police, the Children’s Aid Society, and the Crown Attorney’s Office is critical to the successful prosecution of multi-victim, multi-offender sexual abuse cases. This is discussed in detail in the Report.

Particular Difficulties in Historical Sexual Abuse Cases

There are several reasons why historical sexual abuse cases have not been successfully prosecuted. First, the offender can be criminally charged only under provisions in the *Criminal Code* that existed at the time of the sexual abuse. Therefore, if the offence was committed before either the 1983 or the 1988 amendments to the *Criminal Code*, provisions such as fondling or invitations to sexual touching do not apply, and consequently the offender cannot be criminally charged with these offences.

Another obstacle is that adults who were sexually assaulted when they were children may have problems such as alcohol addiction and drug dependencies. They may also have criminal records. Another outcome of childhood abuse is that they may not be capable of maintaining steady employment. These difficulties result in credibility issues at trial. Both Dr. Jaffe and Dr. Wolfe stressed that people involved with the judicial system—police officers, judges, and lawyers—need to more fully understand the impacts of historical sexual abuse; victims may distrust authority and may not be amicable or courteous. Dr. Jaffe said:

I think it’s important that judges and lawyers and police officers have some awareness about the aftermath of abuse, how to understand the circumstances. The example that I see over and over again is in the court system everyone likes polite witnesses: friendly, cooperative. Survivors are not polite, friendly, cooperative sometimes. They are angry, they are distrustful. They come to court. They make it very difficult. They distrust everybody and one has to accept and acknowledge that and not expect them to be the same. Again, I don’t want to stereotype all survivors, but it’s a reality.

As I discuss in this Report, it is important that trained and specialized persons interview survivors of child sexual abuse. Detective Leaver stressed at the hearings that police need more training and more resources for historical sexual abuse cases. Moreover, counselling services to help these individuals deal with some of these complex problems have not been available in the past, particularly for male victims.

Another problem, which will be discussed in greater detail, was the lack of a reliable system to document reports of abuse to the Ontario Children's Aid Societies. The Ontario Child Abuse Register was established in 1979, but concerns existed as to its accuracy and comprehensiveness. Child protection workers relied on the Ontario Child Abuse Register to determine if there were reports that a particular individual had abused a child in the past. The report needed to be "substantiated" for it to be in the Register. As will be described, an improved system is now in place known as the Fast Track System. For about the past nine years, Children's Aid Societies in Ontario have been connected by a computer system and can, with ease, acquire information on whether other Children's Aid Societies in the province have had contact with alleged perpetrators.

Another problem has been a lack of understanding of how memory functions, particularly in cases of historical sexual abuse. Many people, including police officers and jurors, believe that witnesses who are confident, non-evasive, and non-hesitant in recounting an event in the past provide more accurate and reliable testimony. But what they fail to understand is that memory comes in fragments and that hesitation may indicate that a victim is working to reconstruct his or her memories.

Connolly and Read, professors in law and psychology at Simon Fraser University, wrote in an article entitled "Remembering Historical Child Sexual Abuse":⁸²

... [M]any scholars have found that the single best predictor of belief of a witnesses' [sic] account is the confidence with which the account is expressed: the higher the confidence the more likely the witness is believed. However, in general, the level of confidence a person displays about memory reports of a variety of types of information, from eye-witness identification to general knowledge, is not highly related to report accuracy.

These authors state that compared to memory for neutral (non-traumatic) events, memory for central details of traumatic events such as childhood sexual abuse

82. Deborah A. Connolly and J. Don Read, "Remembering Historical Child Sexual Abuse" (2003), 47 C.L.Q. 438 at 446.

is superior but memory for peripheral details is poorer.⁸³ Moreover, they confirm that repeated abuse often results in an inability to describe the particular details of each sexually abusive act or the specific number of times the victim was abused. This should not, they stress, be used to successfully challenge the credibility of the witness:⁸⁴

... [R]epeated abuse has several predictable effects on memory. These include an inability to recall particular instances or details of the abuse and an inability to estimate accurately the frequency with which the abuse events occurred. Further these detrimental influences of repeated events appear to increase proportionally with increases in their actual frequencies. As a result, *when abuse has occurred on many occasions, it is to be anticipated that only a very small proportion will be recallable as independent and unique events. These kinds of predictable memory errors should not be used to discredit the witness.* (Emphasis added)

In their expert testimony, Dr. Jaffe and Ms Harvey said it is essential that people involved in the legal system, such as police officers, Crown attorneys, and judicial decision makers such as judges and jurors, acquire knowledge about memory. In historical sexual abuse cases, they could be assisted in their deliberations by hearing expert evidence on memory to properly assess the credibility of victims of childhood sexual abuse.

Another obstacle in historical sexual assault cases is getting other victims to come forward and become involved in the criminal process. Another reason for the unsuccessful prosecution of such cases is that the offender may have moved out of the jurisdiction. As Detective Leaver said, the unwillingness of victims to come forward, the death or relocation of witnesses or the perpetrator, and the fact that the site of the sexual assault may no longer exist are some of the complicating factors that impede the successful prosecution of historical sexual abuse cases.

A further obstacle to the successful prosecution of historical sexual abuse cases is that records in institutions may have disappeared. Also, in the past, there was inadequate collaboration and sharing of information between professionals in institutions such as the Children's Aid Societies and police forces. These issues will be discussed in detail in this Report.

The expert evidence given at the beginning of the Inquiry by experts in diverse disciplines on issues such as the prevalence and impact of child sexual abuse

83. *Ibid.*, at p. 449.

84. *Ibid.*, at p. 479.

and impediments to disclosure by victims of abuse was extremely beneficial. These experts also discussed the failure to report child abuse, the lack of accommodation of victims of historical child sexual abuse in the court system, and the obstacles to the successful prosecution of cases of historical sexual abuse of young persons. The information conveyed by these expert witnesses, before evidence was heard on the responses of the institutions to allegations of abuse of young persons, was undoubtedly very valuable to me, to the parties, and to members of the public.

The chapter that follows describes the impact of historical sexual abuse on the victims and alleged victims in Cornwall who testified at the Inquiry.

The Impact of Child Abuse

Over thirty victims and alleged victims testified at the Cornwall Public Inquiry. Some, such as Jamie Marsolais, Cindy Burgess-Lebrun, and Jason Tyo, were in their mid-thirties when they gave their evidence; others were in their forties and fifties, such as Benoit Brisson, Albert Roy, Roberta Archambault, and Kevin Upper; and some, such as Fernand Vivarais, were sixty years old. The victims and alleged victims included a priest (Father Claude Thibault), a film producer and director (André Lavoie), and a lawyer (Claude Marleau). Many of the other victims and alleged victims were in low-paying jobs such as construction and in factories, several had difficulty maintaining steady employment, and a significant number were unemployed. These victims and alleged victims of child sexual abuse described how they suffer from post-traumatic stress disorder, have severe depression, and have panic attacks, problems that for many have impeded them from either seeking or holding down a job.

The purpose of this chapter is to describe the impact of child sexual abuse as recounted by the victims, alleged victims, and their parents, spouses, and siblings. These witnesses painfully discussed the effects of their abuse, which included lack of trust in authority, failure in school, inability to have intimate relationships, inability to parent their children appropriately, attempts at suicide, addiction to drugs and alcohol, and the fragmentation of their families. The effects have been and continue to be psychological, social, and financial. The impact of this historical child abuse mirrors much of what was described in the expert testimony¹ by psychologists, social workers, police officers, and legal experts in child sexual abuse.

Witnesses testified that when they were children in Cornwall they were sexually abused by teachers in elementary and high school, by foster parents while they were in the care of the Children's Aid Society (CAS), and by priests in the

1. See Chapter 2.

Catholic Church. Others stated that they were sexually violated by probation officers, shop owners, and other members of the Cornwall community. The acts of sexual abuse, according to these witnesses, took place on Church property and at youth retreats with the Catholic Church, in foster homes, in schools, and at the workplace of probation officers. Others said they were sexually abused as children in swimming pools and change rooms, in cars, in trailer parks, in motels, in store basements, as well as in the homes of the perpetrators.

For some of the victims and alleged victims, the abuse began when they were very young children. Marc Latour testified that in grade 3, at the age of eight, he was repeatedly sexually violated by his teacher. Roberta Archambault, another witness, described the sexual abuse by her foster father that began when she was a seven- or eight-year-old girl. In summer, the abuse allegedly occurred on fishing excursions, and in the colder months in the garage of the foster home. She testified that the abuse continued until she left the foster home at fifteen years old. Jeannette Antoine was placed in the care of CAS at the age of sixteen months. She remained under the care of the CAS until she was seventeen. She testified that she was sexually abused by her foster father when she was five or six years old, as was her sister. Abuse continued, she claimed, when she was placed in another foster home. Jeannette Antoine was seven or eight years old at that time.

Several other victims and alleged victims discussed the sexual abuse committed by clergy in the Roman Catholic Church during their adolescence. Some of these children were altar boys at churches in Cornwall, others were students in Catholic schools, and some were asked by members of the clergy to do work or chores for them. Others were invited to special events by priests.

Other victims and alleged victims claimed they were abused in their pubescent and post-pubescent years by government employees, some of whom had professional responsibilities for these youths. Witnesses testified that probation officers fondled and performed sexual acts on them. Others asserted that a federal employee at Canada Manpower sexually abused them from as young as nine years old. Some witnesses claimed that a member of the legal profession in the Cornwall community committed sexually abusive acts on them during their childhood.

Other Cornwall residents testified that they were abused in the 1980s by an employee of Transport Canada in a variety of locations, including the offender's home, a cottage, and in public facilities. Some of these children, who included siblings and schoolmates, stated that at times, they were abused together with a brother, sister, or classmate.

Other witnesses testified that they sustained years of abuse in their adolescence in foster homes in Cornwall when they were placed in the care of the CAS. The abusers and alleged abusers included foster parents, foster siblings, and childcare workers.

As previously discussed in Chapter 2, on expert evidence at the Inquiry, child victims are often groomed by perpetrators of sexual abuse. Several of the victims and alleged victims described the grooming process and the gifts, alcohol, and money they received from these sexual predators.

Alain Seguin described how a photography teacher at high school, Robert Sabourin, befriended him and his family. The teacher often invited Alain, who was thirteen or fourteen years old at that time, to lunch. He then offered to teach the young boy photography. He lent Alain his camera, and he invited the grade 7 student on photography excursions. He also gave the boy keys to his office at the school. This teacher visited Alain Seguin's home and also offered photography services to Alain's parents for their family reunions. Alain's parents gave the high school teacher permission to take their son on a trip to Ottawa for the inauguration of Bishop Adolphe Proulx as Archbishop. The high school teacher told Mr. and Mrs. Seguin that he was a photographer for the Diocese of Alexandria-Cornwall and a personal friend of the Bishop. As Alain Seguin testified, the teacher "made himself seem very revered."

This high school teacher introduced Alain to alcohol and continued to take him to restaurants for meals. Alain Seguin said that the grooming process took place for about six weeks before he was sexually molested. And when the sexual abuse began, Alain did not understand what was happening. He stated at the hearings:

Things of a sexual nature were very, very new to me and I didn't understand. All I knew was this man was an adult. He was respected. I had been taught that adults knew what is right and wrong.

Mr. Sabourin was ultimately charged, pleaded guilty, and was sentenced in 1999.²

André Lavoie was sexually abused by the same high school teacher, Robert Sabourin. Mr. Sabourin pleaded guilty and was also sentenced in 1999. Beginning in grade 9, André was taught French and then filmmaking by this man. In fact, he taught André Lavoie in all of his five years of high school. As Mr. Lavoie testified at the hearings, this teacher quickly identified his interest in literature, music, and film. Mr. Sabourin invited André to his basement apartment. The abuse took place in the closet at school and in his apartment. This teacher gave André driving lessons, and the young boy had access to his teacher's car. He also took his student on trips. André Lavoie testified that the teacher:

... very rapidly identified my interest in literature, music and film. It was perfect. So I was a perfect victim for him because he was sort of a role

2. This will be discussed in fuller detail in this Report.

model. He took an interest in me. You know, say, “You’re interested in music? Well I’ve got music at home that I can show you, a nice stereo system, all kinds of records and stuff” and he would play me all on those things. So he immediately satisfied whatever cravings a kid might have.

...

... [A]s soon as he took an interest in me, I felt great. I mean, “Gee, here is somebody who can line me up and make sure that I do my very best academically and artistically.” That was my first reaction. “Well, this is wonderful.” But that soon turned sour.

...

... [H]e had these saxophone type records. And in films, we had these [sic] nice Nikon camera with interchangeable lenses that was an absolute joy to behold. And I had access to all that stuff.

...

... [H]e would encourage my studying habits. He would show me ways to make notes out of books so that I could remember parts of them better. A real lesson in how to study and how to memorize information so that you could do better at your exams. That’s the way it started.

And then following—a few weeks later he would say, “Well, now you need to know how to relax. You have worked pretty hard, so why don’t you lie down on the bed here and I will turn down the lights and things and I will see you in a few minutes.” And it progressed to where he would come over and give me massages.

Mr. Lavoie stated that he was abused by this teacher throughout his five years of high school.

Children in the Burgess family and their school friend Jason Tyo also described how they were groomed by a man who sexually assaulted them in different locations, sometimes in each other’s presence. They identified the perpetrator as Jean Luc Leblanc.

Jody Burgess testified that at the age of twelve or thirteen, he was approached at a Cornwall gas station by a man on a motorcycle. The man, Jean Luc Leblanc, asked if Jody was interested in doing odd jobs and offered to pay the boy \$20.00 to cut his grass. This was a substantial amount of money for Jody. Mr. Leblanc introduced himself to Jody’s parents, who were aware their son was spending

time with this man. He took Jody and his brother, Scott, for rides on his motor-cycle, clearly a “thrill” for the young boys. Jody Burgess said that in the four-year period in which he was abused, the perpetrator continued to give him money, took him to restaurants, and bought him a scarf, hat, and other gifts. He also took Jody on trips on a train and on a plane, first experiences for the young boy. His friend Jason Tyo also described the money, meals at restaurants, and gifts such as a bicycle and a videogame that were given to him by Mr. Leblanc.

It was the testimony of the Burgess children that after the perpetrator sexually assaulted Jody Burgess, brother Scott and sister Cindy soon also became victims. Cindy Burgess-Lebrun echoed the evidence of many victims of historical child sexual abuse that as a young girl, she did not appreciate that she was being sexually abused. She was unaware of the impropriety and illegality of these acts. Mr. Leblanc pleaded guilty to sexual acts perpetrated on Cindy Burgess, Jody Burgess, and Jason Tyo.³

Robert Renshaw and his siblings were raised by their father until his death in 1981. Robert Renshaw testified that when he was fifteen, his older brother’s probation officer, Ken Seguin, asked him if he would cut his grass and work on his flower beds. This probation officer was a frequent visitor at the Renshaw home, beginning in approximately 1976 or 1977. Robert Renshaw stated that he was sexually abused by Mr. Seguin. A few years later, both Robert and his younger brother Gerry got into trouble with the law and were supervised by this same probation officer. They testified that they were invited to Mr. Seguin’s home and offered alcohol and the use of his car. This probation officer, testified Robert and Gerry Renshaw, repeatedly sexually abused them while they were under his supervision.

Claude Marleau testified that he was about eleven or twelve years old when he was asked if he would like to do chores in a store—sorting bottles, cleaning floors, and distributing flyers—for a man who became his perpetrator of child sexual abuse. This store owner offered young Claude rum and Coke, and he was groomed by this man and his acquaintances, who included members of the clergy.

Claude Marleau, who was from a lower-middle-class family, received money for these chores and the opportunity to drive a car when he was clearly too young to have a driver’s licence. The abusers offered him emotional support and became like an alternative family. The store owner introduced Claude Marleau to a priest, Father Paul Lapierre, who became a parental figure. Mr. Marleau said that this priest became the most important figure in his adolescence. The priest showed

3. This will be discussed in fuller detail in this Report.

young Claude the affection he was missing at home and became Claude's mentor. Claude Marleau had a lot of respect for him. As Mr. Marleau said, this priest:

... est devenu la figure la plus importante de mon adolescence ...

...

Donc, c'est comme lui qui a été—qui a remplacé l'affection que j'avais—que je croyais avoir perdue chez nous et c'était devenu mon mentor. C'était devenu mon mentor.

Et j'avais un très grand respect pour ce qu'il représentait dans ma tête d'adolescent.

Soon a line was crossed, which Claude Marleau was not even aware of at the time.

This priest introduced young Claude to other members of the clergy who, Mr. Marleau said, also sexually abused him. He testified that each new perpetrator he was subjected to knew about the prior abuse. Claude Marleau felt like a toy or present that was passed around. The priest gave him money, bought him his first ski boots, and took him to restaurants. Mr. Marleau said that the men who abused him were the only stability he had during his adolescence. The abuse occurred repeatedly for a number of years until he was sixteen or seventeen.

Father Lapierre was ultimately charged in Ontario and in Quebec. He was found guilty in the Quebec case in 2004, but not guilty in the Ontario prosecution in 2001.

Fernand Vivarais recounted a similar experience. He testified that from the age of eleven or twelve, he was groomed by a priest at a church to which his family belonged. His parents were religious. The priest played ball with young Fernand and invited him to the Ice Capades in Montreal. Fernand Vivarais had never been to the Ice Capades—it was very exciting. His parents willingly allowed their son to go on the trip to Montreal with this respected religious figure in their community. Fernand Vivarais thought of him as “a God or something.” Mr. Vivarais said that it was on this trip that he was sexually abused, repeatedly, by this priest: “[H]e got me in a bear hug and he actually held me like a dog ... over and over again.”

As will be discussed in the following chapters, some of the perpetrators were criminally charged, and a few were convicted of these acts of child sexual abuse. But some of these alleged offenders died or committed suicide before their criminal trial or before they were even charged. In some circumstances, proceedings

were stayed by the court⁴ because of the long lapse of time in the prosecutions. Criminal trials of some of these alleged offenders did not proceed for a variety of reasons, which will be discussed in detail in this Report. There was also testimony that convicted offenders continued to sexually abuse children in the Cornwall community after they were sentenced or while on probation.

The effects of the child sexual abuse on these victims and alleged victims were both immediate and long term. There were serious repercussions throughout their childhood, and the abuse continued to deeply affect them psychologically, academically, economically, and socially. It affected their ability to trust, to sleep, to love, to parent, and to economically sustain themselves and their families. The desire to live was greatly diminished and sometimes non-existent. The spouse of one of the witnesses described the child sexual abuse sustained by her husband as “a life long sentence.”

Juliette Seguin, a single mother who raised her son, Larry, testified that his behaviour regressed immediately after the six year old was abducted and sexually abused. Upon his return home, he began to speak in “baby talk.” Larry explained that after the abuse, he “felt different than other kids.” He began to socialize with older children. By ten years old, Larry Seguin was using drugs. As he explained at the hearings, he started “using drugs basically to erase—to get rid of the pain I was feeling emotionally, which kind of led me into the wrong path of life.” As a result of his drug addiction, he shoplifted and committed other property crimes. As his mother, Juliette Seguin, lamented, her young son’s “innocence” was taken from him as a result of the abuse. This was reiterated by many witnesses, including C-11, who testified that he was sexually abused when he was twelve or thirteen by a man who worked at Canada Manpower, who tutored him in violin. C-11, now in his fifties, agreed that nothing “brings back” the innocence. The OPP took a statement from the alleged perpetrator, who admitted he had engaged in sexual activity with this boy. A few days later, this man, Richard Hickerson, committed suicide.

Jamie Marsolais was also raised by his mother in a single parent family. He testified that his abuser was the same man who worked at Canada Manpower. Jamie Marsolais, nine years old at the time, did not have a male influence in his life. He did not understand that the abusive acts were inappropriate. As Mr. Marsolais said in his evidence, “I didn’t realize at that time it was wrong what was happening” and “I didn’t think that someone would harm me, especially someone that supposedly cares about you.”

At the age of fourteen, Jamie Marsolais started to drink, and by sixteen he was consuming large quantities of alcohol. As he said at the hearings, “I began

4. This means that the proceedings did not continue.

to drink very heavily,” and this continued for many years. It is only in the past few years that he has been able to get his drinking “under control.”

Jamie Marsolais’ academic performance suffered as well. When he began to comprehend the impropriety of the sexual acts that had been committed on him, Jamie’s behaviour and school marks took a downhill turn. His academic average, which had been in the nineties, dropped to the sixties in grade 7. As his anger set in, Jamie began to act out and for the first time saw “the inside of the principal’s office.” In the words of Mr. Marsolais, “I never kind of came back from that.” By grade 10, he had dropped out of school. At the age of sixteen, he left home and had a child not long after. As Mr. Marsolais reflected, “I was still a child myself at sixteen.”

C-14, who testified that he was abused multiple times in foster homes, also suffered academically. He had performed very well in school prior to the sexual abuse. But it was not long after he was sexually violated that C-14 “stopped studying,” “gave up on school,” and completely “abandon[ed]” any “educational pursuits.”

As I discuss in this section, the abuse suffered during their childhood years had a significant impact on the economic circumstances of these individuals.

Claude Marleau was inquisitive, had a lot of energy, and his grades in primary school were well above average. As mentioned, Mr. Marleau testified that beginning at age eleven, he was abused for a number of years by a group of men who knew each other, including members of the clergy. One of these men was Father Lapierre. Claude Marleau’s grades plummeted. The abuse resulted in a tumultuous adolescence, and he dropped out of high school in 1970. His behaviour and poor academic performance caused problems and strain within his family. He was perceived as lazy, and people thought he would not go anywhere in life. As Mr. Marleau said at the hearings, “Tu as toujours le sentiment d’être en fuite part rapport à ça,” which means that you always feel as if you are running away. Claude Marleau carried tremendous guilt for many years as he was convinced that he had voluntarily participated in these abusive acts. Despite these and many other obstacles encountered as a result of the abuse, Claude Marleau ultimately went to law school and was admitted to the Quebec Bar in 1983.

Alienation from parents and the fragmentation of families were other serious impacts of the sexual abuse sustained by child victims. Marc Latour testified that a grade 3 teacher at a Catholic school sexually abused him when he was eight years old. Mr. Latour, in his late forties at the time he gave his evidence, said that the most significant impact of the abuse was the loss of his relationship with his mother. The adult who sexually abused him convinced him that his “mother gave him permission to do those things.” In emotional testimony, Marc Latour said:

... [T]he effects were enormous all through my life. The biggest thing is, he took my mom away ... I always believed to be true that she gave him

the permission and I hated her, all my life. I even hated her when she died ... He took away my dream, my future.

I've been through things I never would have been through if it wasn't for him. And, the only reason I'm here is in memory of my mom.

The abusive acts had serious consequences on Marc Latour's behaviour. From the age of eleven until eighteen, he was in trouble with the law and was sent to a reform school in Alfred as well as a correctional facility. He drank excessive amounts of alcohol, was convicted of impaired driving, and served time in a correctional institution when he was sixteen or seventeen. As Mr. Latour explained, "I started drinking just to help me get through what happened to me. I kind of used drinking as a medicine ... I abused alcohol just to forget."

Victims and alleged victims of child sexual abuse described their mistrust of authority in their evidence at the Inquiry. Kevin Upper testified that he was sexually abused by a priest in his church when he was an altar boy, as well as by his grade 8 teacher, who was a deacon at the same church. He became deeply "confused" about "authority" and about "what's right and wrong," and he did not know "who to go to when something [was] wrong." Kevin Upper had recurring nightmares and "did a lot of drinking and drugs ... to help cope."

Lack of trust in authority and failure in school were also experienced by Fernand Vivarais. Mr. Vivarais said he completely lost interest in school after he was abused at eleven or twelve years old by a priest at a church that his family regularly attended. He said at the hearings, "You become a loner ... [Y]ou don't trust anybody." He began to drink alcohol, and he became contentious and belligerent.

C-10 similarly described his problems with authority, his anger and resulting difficulties in school, and his addiction to drugs as a consequence of sexual abuse by a priest and other individuals in the Cornwall community. As C-10 said, "[O]nce I was abused, I just went downhill ... I had no focus ... I was angry ... too angry to do anything sometimes."

Albert Roy, who testified that he was sexually abused by two Cornwall probation officers when he was a teenager, said: "I tried to stay drunk as much as I could ... [t]o try and stop thinking about it ... I wouldn't allow myself in a room alone with a man, like anybody in authority." He identified these two probation officers as Nelson Barque and Ken Seguin. Mr. Barque pleaded guilty to indecent assault on Albert Roy in 1995. He was sentenced to four months custody and eighteen months probation in 1995.

Abandonment of religion was another impact of children sexually assaulted by clergy. Benoit Brisson, like many children in Cornwall, was raised by parents who were devout Roman Catholics and very involved in the Church. His father

led the church choir at Christ-Roi Parish. The member of the clergy who abused him, Father Gilles Deslauriers, was the chaplain at a Roman Catholic high school. Benoit placed his trust in this priest. Benoit's mistrust of authority, particularly of persons affiliated with the Church, caused him to completely abandon his religion. Father Deslauriers pleaded guilty in 1986. Similarly Claude Marleau, who testified that he was repeatedly abused by clergy in the Catholic Church, is no longer a practising Catholic, refuses to be labelled a Catholic, and is angry at his parents for baptizing him. Fernand Vivarais also said in his evidence, "I don't believe in God, I don't believe in the Church, I don't believe in priests." When his nephew died recently, Mr. Vivarais could not bring himself to attend church for the funeral of his brother's child.

Kevin Upper similarly testified that he "eliminated the church out of [his] life" as a result of the abuse he sustained in grade 8 by a teacher and a priest. He became introverted and confused, no longer trusted people in authority, and did not know to whom he could turn "when something [was] wrong."

Confusion about their sexuality and the inability to be intimate were other serious impacts repeatedly described by victims and alleged victims at the Inquiry. A witness who was sexually abused between the ages of eleven and seventeen by male adults described his confusion about his sexual identity:

D'abord on se lance dans une quête effrénée de vouloir se convaincre qu'on est hétérosexuel parce que, vous savez, avant de réaliser que homosexualité et pédophilie sont deux choses très différentes, ça prend du temps. Donc tu vis avec cette peur-là jusque dans la jeune trentaine ...

Claude Marleau states in this passage that he essentially went on a mission to convince himself that he was heterosexual, that it took a long time to realize that homosexuality and pedophilia are two very different things, and that he lived with this fear until his early thirties.

A forty-year-old female witness explained that she does "not like to be touched." A male witness described his "contempt" for his "own body." Other witnesses, such as C-14, "look for reasons to avoid [their] bedroom" and suffer from serious insomnia. Fernand Vivarais also discussed his years of sleep deprivation and resort to alcohol as a result of the abuse he suffered as a child: "[Y]ou can't sleep because he's behind you every time you wake up at night. It's not him, it's your wife, but you think it's him."

Mr. Vivarais regularly arrived at home intoxicated, hoping that the excessive amounts of alcohol he consumed would help him "get sleep." "It has been rough

on the wife and kids,” he said at the hearings. He also described a constant source of anxiety; for the past forty years he has washed and scrubbed but cannot get the sensation of semen off him:

I still go through that. Back then I used to wash and scrub, wash and scrub, I couldn't get it off. To this day, I still haven't got it off ... It's even—now I'll jump in the shower periodically and you know, you don't think about it. And you try and scrub it off and you can't [get] it off.

Witnesses attributed the child sexual abuse they suffered as the major cause of the disintegration and breakdown of their marriages. Benoit Brisson, for example, discussed how the sexual abuse committed on him as a child by a member of the clergy was the catalyst for his separation from his wife. The same priest who sexually abused him in his teens had blessed his engagement, married him, and baptized his oldest child. Two years after he was married, Benoit Brisson announced to his wife, Denyse Deslauriers, that he wanted to separate. After much urging by his wife, who was “shocked” by Benoit's announcement, he disclosed for the first time that the priest who had officiated at their wedding and child's baptism had sexually assaulted Benoit in his youth. As mentioned, this priest, Father Gilles Deslauriers, was later criminally charged and ultimately pleaded guilty.

Jamie Marsolais similarly described how the “abuse has taken its toll on two long term relationships” and that he has a problem with intimacy. He has had multiple sexual partners and has participated in unsafe sex. Mr. Marsolais said the child sexual abuse that he sustained:

... caused me to make quite a few unhealthy choices in life and dangerous ones. I have slept with exotic dancers and escorts in the past because of this, because there was no attachment and it was kind of a quick fix for that addiction. It's not something I'm proud of and it's not anything I've shared with anybody until recently, but I think it's something important to say here in a forum like this so that people can understand ... So it's something else that I've had to cope with and deal with.

...

But there's a problem with intimacy as well ... I mean, you're taught at a young age that intimacy is something that's selfish and for one's pleasure. So that was—that took a toll on my first marriage.

As far as my second relationship, I mean, I had learned that it was something greedy and for the taking instead of something to share with someone, and that all compounded into our family life.

André Bissonnette also said that as a result of the abuse he endured in a foster home as a child, he “could never be intimate with anyone.” Similarly, Cindy Burgess-Lebrun stated that the abuse she sustained is constantly in her mind and had a serious impact on her relationship with her spouse. As she said at the hearings, “All these years, I cried when my husband made love to me because [the abuser] invaded my thoughts ... even at these precious times.” C-14 testified, “[M]y inability to form long-term trust relationships has prevented me from ever marrying ... My dreams of normalcy, owning a home, and raising a family, have all vanished.” Another witness, C-11, said, “[N]othing brings back the loss of innocence. Once that’s taken away from you, the chance of coming into healthy human sexual experience is corrupted; your world is skewed.”

Not only did the sexual abuse have an impact on relationships with spouses and partners, but it also affected the ability of victims to parent. Cindy Burgess-Lebrun, abused in the 1980s with her siblings when she was about twelve years old, discussed the impact this has had on her parenting. She is not able to allow her adolescent child to develop the skills necessary to become an independent person, as Cindy Burgess-Lebrun has deep-seated fears that her child will be harmed or abused. She is “a very over-protective parent”: “I have a fifteen year old who cannot go three blocks from my home ... and I wish I could let him be a little more free.” Her brother Scott Burgess has difficulties relating to his children. As he said in his testimony, “My son, he tries to get close, but I push him away.”

Jamie Marsolais also described how the sexual abuse he sustained as a child had adverse repercussions on his relationship with his son from his first marriage:

I wanted to toughen him up a bit ... I didn’t want him to be weak like I was or I perceived myself as being. I’ve made a lot of mistakes parenting ... It’s never too late to start over, but I can’t give them back those years either. So everything trickles down.

Mr. Marsolais discussed how the abuse has an impact on subsequent generations.

Kevin Upper also described the effects on his children and grandchild of the abuse he allegedly sustained. Mr. Upper overdisciplined his sons, was impatient, and was always “yelling at them for almost anything.” He was also overprotective. Mr. Upper insisted on accompanying his children to camp and was their coach. “I had to get involved in everything my kids did,” he said at the hearings.

Kevin Upper lamented the toll the abuse has taken on his family—his children and grandson. Jeannette Antoine also “watched” her “daughter like a hawk so nobody would touch her.”

Marc Latour and André Bissonnette similarly described their poor parenting skills, which they attributed to the sexual abuse they were subjected to as children. Mr. Bissonnette simply “could not be a good father” to his children, and Mr. Latour discussed how his own behaviour adversely affected his son’s educational prospects. Another alleged victim of abuse described his difficulty having physical contact with his baby. “Changing my own child’s diapers kind of felt awkward because of what had happened to me,” he said in his evidence. Alain Seguin described his distance from his children: “[A]s a father, you know, there were some protection aspects of me that was missing towards my children ... because things happened to my children too and I didn’t react properly.” Mr. Seguin said that he could not react when his children were in danger. Vicki Roy, another witness, described how her husband Albert was “afraid to hug his own sons” as a result of his childhood abuse.

Job instability and the resultant negative financial repercussions was a further impact of abuse described by witnesses at the Inquiry. André Bissonnette has moved from one job to another. Inability to deal with authority and difficulties with alcoholism have been impediments to employment stability. Similarly, Scott Burgess has not been able to stay at one job for a long period. He testified that as a result of being sexually abused by a male perpetrator, he has difficulty interacting with men, including fellow employees at work. Albert Roy also said that he has had difficulty “hold[ing] down jobs” and “being alone with a male” as a consequence of the sexual abuse he sustained as a child. “It was always all in the back of my mind” that males may be molesters, he told the Inquiry. He is particularly afraid of males in positions of authority. Benoit Brisson described his constant relocations, frequent job changes, and instability. He has moved about twenty times since 1994, from Cornwall to Kingston, Toronto, and Ottawa:

J’ai déménagé peut-être une vingtaine de fois depuis 1994. Je suis allé de Cornwall à Kingston, à Toronto, à Kingston, là je suis à Ottawa. Même chose avec mes jobs.

Donc, il n’y a rien de stable.

The serious psychological effects of childhood sexual abuse throughout their adult years were described by these witnesses. Some victims and alleged victims testified that the abuse they sustained as children has impeded their ability to

work. Several have been diagnosed with post-traumatic stress disorder. Roberta Archambault described not only her inability to work but also the difficulties she encounters in performing mundane tasks such as grocery shopping and going to the bank:

I can't go into the bank and then do groceries because I have panic attacks so bad that I can't do both on the same day. It takes me a day to recover from just going into a bank. It takes me a day to recover from doing groceries. From the anxiety attacks, I can't take the bus. I can't be around crowds of people.

Similarly, C-14, who suffers from depression, insomnia, anxiety attacks, and migraines, has “trouble finding the energy to perform even the most menial of tasks.” He and other witnesses discussed their suicide attempts. André Lavoie described how he has “faced the muzzle of a twelve-gauge shotgun.” He said:

... [F]rom the age of 14 when the abuse started until this very day, I don't think there is one day that goes by—there might [be] one or two—without myself truly, deeply thinking how to end the pain, and the only solution that I can find is suicide. So I have been living with death my whole life because every time that he abused me, I would die basically, because I just couldn't take it. So I would split my body from my spirit. “Take the body, take whatever you want. Have fun. When you're done, I'll try and recombine the two,” which is not easy to do because you're dragging around a piece of dirt and then you live with that for the rest of your life. And the pain starts.

So you know, I have faced the muzzle of a 12 gauge shotgun and looked at it and just pondered, this could end right now. The only thing that stopped me is the one question, what if. What if something happens that changes my future in a dramatic way in the next second, but I just pulled the trigger, right. Also, I don't like a mess.

So the final solution that I have come up with, which is really, truly elegant is an excellent bottle of scotch and a blend of carbon monoxide, and that is so satisfying knowing that solution is there for me and I can take it anytime.

Several of the victims and alleged victims continue to take medication such as antidepressants to help them cope with the effects of their child sexual abuse.

As Jamie Marsolais said, “[J]ust because the scars aren’t evident, it doesn’t mean the scars aren’t there. There’s still impacts.” Mr. Marsolais has been diagnosed with post-traumatic stress disorder and depression and has been hospitalized for panic attacks.

Guilt and a sense of responsibility for the sexual acts perpetrated on them as children continue to haunt many of the victims, such as Claude Marleau. As another witness explained:

... [A]s a victim, you always feel that somehow it was your fault ...
[I]t was like there was something about me that made these men
[the perpetrators] react this way ... [I]t’s something I still deal kind
of with ... [A]s an adult, you think why didn’t I do something? Why
didn’t I stop it?

André Lavoie expressed similar anxieties:

... [O]ne December evening, he demands, “Do you want me to put your penis in my mouth?” And he repeats, “Do you want me to put your penis in my mouth?” Until I finally replied “Yes.” I thought it was all a mistake, that it would end right there. My approval that first time still echoes in my mind, but I hear myself screaming with rage to this day. I can still picture my body on that small bed, naked and confused. At the age of 15, I lost my innocence. I lost any right to a normal life, lost the privilege of defining my own persona. I became an accomplice to a deranged individual. Until recently, I felt like a whore who had compromised his ambitions to satisfy the hunger of a vulture ...

That one word [yes] set off a chain of events that would forever change my life or damage my life. On that snowy December evening, I lost my youth, my right to explore my own sexual life, gave up any chance to a normal future.

Mr. Lavoie was sexually abused by his teacher repeatedly throughout high school. As mentioned, the perpetrator, Robert Sabourin, pleaded guilty in the criminal prosecution.

Jamie Marsolais testified that his sexual abuse began in a Cornwall theatre when he was a young boy. As the perpetrator sexually fondled him, he asked Jamie if it felt good. Jamie responded, “I don’t know.” For the next two decades, Mr. Marsolais punished himself for uttering these words:

So the reason why I'm sharing this story is because those three words I had to beat myself up over for over 20 years because that's where it had started and I thought I had let it happen. Had I handled it differently, you know, things could have changed ... [T]hat was something that haunted me that certain episode and that I saw at night while I slept and so on for so many years.

I just thought it was important to share that and how some incidents really scar people and that, you know, I had to accept that, you know. It didn't matter what I said at that time and I was only nine years old.

One of his alleged perpetrators, Richard Hickerson, committed suicide before Mr. Marsolais reported that he had been sexually abused. The other sexual offender, James Lewis, pleaded guilty.

Clearly, the impact of sexual abuse on these child victims has been serious. The repercussions have been both immediate and long term.⁵ The scars from the abuse are psychological, social, academic, and financial. Suicide attempts, drug and alcohol addictions, depression, insomnia, recurring nightmares, mistrust of authority, and failure in school are some of the impacts of the abuse described by witnesses and their families at the Inquiry. Victims, their siblings, parents, and spouses also painfully described the inability to parent, the inability to maintain steady employment, the loss of faith in God and abandonment of religion, the confusion about sexuality, and the inability to have intimate relationships.

The following chapters describe the interactions of the Cornwall victims and alleged victims of child sexual abuse with institutions such as the police, school, Children's Aid Societies, the Church, and government ministries such as the Ministry of Community Safety and Correctional Services and the Ministry of the Attorney General. The response of the institutions to the allegations of child abuse in Cornwall, a central mandate of this Inquiry, is discussed in detail in the following chapters of this Report.

5. Note that although some of the victims and alleged victims are not specifically named in this chapter, including John Macdonald, David Silmser, Cathy Sutherland, and C-8, the following chapters of the Report describe their allegations and some of the effects of the historical sexual abuse they allegedly suffered when they were young people.

Media Coverage of Allegations of Historical Abuse of Young Persons in the Cornwall Area, 1986–2004

Expert Witness on Media Analysis Testifies at Hearings

Dr. Mary Lynn Young, Acting Director of the Graduate School of Journalism at the University of British Columbia, was qualified as an expert in media analysis at the Inquiry. The main focus of Dr. Young's academic teaching is best practices news writing. She trains journalists to write, research, and report in different media such as print, broadcast, and the Internet. Prior to joining the University of British Columbia, Dr. Young taught journalistic best practices at the Ryerson University in Toronto.

Dr. Young was a crime reporter for a number of daily newspapers in Canada and the United States, including *The Hamilton Spectator*, *The Vancouver Sun*, and *The Houston Post*. She also worked as a national business columnist for *The Globe and Mail*.

Dr. Young's primary concentration is media content analysis. She has experience in both quantitative and qualitative analysis. Dr. Young is also the author of journal articles. These articles include an analysis of major crime stories in the United States, the impact of lack of media competition on the content of reports, and an analysis of media coverage of the Pickton case in Vancouver, British Columbia, in which sixty-five women went missing in a thirty-year period. For her doctoral dissertation, Dr. Young examined sixteen years of media content to determine whether newspapers increased their coverage of sensational crime when the environment became more competitive. The research methods employed and analysis conducted for her published articles and her doctoral dissertation are similar to the work Dr. Young was commissioned to do for the Inquiry.

Dr. Young has made presentations on the media in Canada, the United States, and Asia. Some of the titles of these presentations are "Media Credibility in Canada," "Gendered Practices and Media Panics: Masculinity, Newspaper Wars

and Crime Content in Canada,” and “Sensationalism and Resources: U.S./Canada Differences in Attitudes Towards Media Credibility.”

Purpose and Scope of the Media Study for the Cornwall Inquiry

Dr. Young was asked to conduct a study of media coverage of allegations of historical abuse of young persons in the Cornwall area from 1986 until the end of 2004 (at which time the media focus shifted to the establishment of the Public Inquiry). Her study of this period involved print, radio, and television broadcast news reports from a media database that had been compiled by the Cornwall Public Inquiry. Dr. Young concentrated on two main issues:

1. what media content or information may have influenced the institutions in their responses; and
2. how media coverage affected the understanding of the community regarding the social problem identified in Cornwall.

The trends and changes in media coverage during this nineteen-year period were examined with a focus on both the nature and the amount of information made available through print and broadcast.

The specific research questions addressed by Dr. Young were:

1. What information about the allegations of historical abuse of young persons in Cornwall was communicated to the public, and did it change over time? In other words, what facts or frames were selected by journalists, and did the reporting change in the 1986–2004 period?
2. What key themes emerged and, in turn, were disseminated to the public?
3. Who were the key voices and agenda setters represented in the media coverage, and how were they framed over time?
4. What media genres were used to cover the allegations of abuse as they unfolded? Were they short news stories or longer-form investigative journalism?
5. What was the geographic diffusion pattern of the media coverage? Was the coverage predominantly in local media in Cornwall such as the *Standard-Freeholder* or the *Seaway News*? To what extent was there regional media coverage of the issue such as in the *Ottawa Citizen*, *Ottawa Sun*, or affiliates of the larger broadcast outlets in Ottawa, or national coverage such as in *The Globe and Mail* or *National Post*?
6. What were the peak coverage times from 1986 to 2004?

As explained by Dr. Young, the issue of whether media coverage can alter the institutional response is complex. Clearly, she said, media coverage can have an impact. She gave the example of the campaign of Mothers Against Drunk Driving (MADD). This movement, which was covered extensively in the media, changed social policy and cultural norms surrounding drinking and driving. Dr. Young said that although “it would be inaccurate and simplistic to locate the genesis of that shift in the media coverage of MADD,” it “obviously played a part.”

Methodology

The study by Dr. Young for the Inquiry, as mentioned, involved an examination of both print and broadcast media. The content was predominantly mainstream media information from established local, regional, and national print and broadcast outlets. Both qualitative and quantitative content analysis was conducted. The quantitative analysis examines who said what to whom, and with what purpose; it seeks to identify general trends in the media content over time.¹ The qualitative analysis, subjective in nature by contrast, focuses on how issues surrounding allegations of historical abuse were represented by the media. It examines the narrative, or framing, trends.

Citizen journalism—that is, citizen-created information and news reported on websites during the 1986–2004 period—is not included in Dr. Young’s report. Nonetheless, it was not surprising to Dr. Young, given that Cornwall is a small community with a limited number of media outlets, that citizens decided to write about these issues on the Web. The specific focus of her report was mainstream media outlets.

Document Sample

The document sample was created from the Cornwall Inquiry database of print documents and broadcast files. The database contained 1,329 unduplicated print media articles in the 1986–2004 period. Of these, 1,105 were news reports and 224 were letters to the editor.

According to statistical principles, it is not necessary to examine the entire database in order to address the research questions described. As explained by Dr. Young, the standard way of establishing a workable sample is to use a

1. SPSS (the Statistical Package for the Social Sciences), an established academic software package, was used for the data analysis. It is essentially a high-level Excel program commonly used in the social sciences.

“constructed week” in the media; this means randomly sampling a week of newspaper articles. Sampling articles over two separate weeks in a year is considered sufficient to create a representative sample from which to draw conclusions for the purpose of media analysis.

Rather than sampling two weeks out of a fifty-two week period, Dr. Young decided to conduct more rigorous sampling. She sampled every second article; that is, 50 percent of the media database. The sample was 555 print articles (one-half of the 1,105 unduplicated print articles from the database). Although this was probably “over-sampling,” Dr. Young considered it “better to have more information than you require than less.”

To ensure the accuracy of the media articles in the Inquiry database, Factiva, one of the most comprehensive databases of Canadian print and broadcast news content, was examined for the period January 1, 1986, to December 31, 2004. The key words “Cornwall,” “abuse,” and “Ontario” were used in the search of the database. It became apparent that the Factiva sample contained no media coverage of the issue from 1986 to 1993.

The first mention of historical sexual abuse in Cornwall in the Inquiry sample was in 1986. The local newspaper, the *Standard-Freeholder*, described criminal proceedings against a Catholic priest in the Cornwall area, Father Gilles Deslauriers, who pleaded guilty to four counts of gross indecency involving historical abuse of boys.² As will be discussed later in this chapter, it was not until 1993, seven years later, that media accounts of allegations of historical child sexual abuse by priests in the Diocese of Alexandria-Cornwall were again covered.

As far as the broadcast sample of radio and television news clips from the Inquiry media database was concerned, the amount of coverage was significantly smaller than in the print media database. There were only twenty-one broadcast clips, which included a number of television newscasts from a CTV affiliate in Ottawa, CBC Television, and a *Fifth Estate* television documentary. It also included a CBC Radio series that won a national investigative journalism award for its coverage of the allegations of historical abuse in the Cornwall area.

Variables Examined in the Media Study

In her determination of which variables to use for this study, Dr. Young examined the research questions as well as the literature on media coverage of crime and social problems of this nature. A coding sheet with variables was developed, which is reproduced here.

2. “Priest Pleads Guilty to Gross Indecency; Put on Probation,” cited in Dr. Mary Lynn Young, *Report on the Media Coverage of Allegations of Historical Abuse of Young Persons in the Cornwall Area, 1986–2004* (Young Report), Prepared for the Cornwall Public Inquiry, October 22, 2007, p. 6.

Coding Sheet

Cornwall Public Inquiry

Year	Genre	Origin
	1. News story	1. Local
	2. Brief	2. Regional
	3. Feature	3. National
	4. Editorial	4. Specialized
	5. Column	

Number of sources – 0, 1, 2, 3, 4, 5

Source	Facts cited
1. Cornwall Police	1. Pedophile ring exists
2. OPP (Project Truth)	2. Suicide—victim
3. Alleged victim/family	3. Suicide—perpetrator
4. Government official	4. Conspiracy against victims
5. Social agency occurred	5. Historical child sex abuse—uncertain/never
6. Expert	6. Cornwall Police—thorough investigation
7. Catholic Church	7. Cornwall Police—NOT a thorough investigation
8. Other media	8. OPP/Project Truth—thorough investigation
9. Citizens group investigation	9. OPP/Project Truth—NOT a thorough investigation
10. Perry Dunlop	10. Judicial system—thorough job
11. Other source	11. Judicial system—NOT a competent job
12. Alleged perpetrator	

Tone

1. Positive	2. Negative	3. Neutral
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Genre This variable essentially asks, “How was the story presented?” Was it a discrete news event, reflecting a certain time and place? Or did it contain more in-depth information such as an investigative news feature or longer-form journalism?

Origin This variable examines the location of a news outlet. Cornwall’s two newspapers, the *Standard-Freeholder* and the *Seaway News*, constituted the local coverage; Ottawa’s two daily newspapers, the *Ottawa Citizen* and the *Ottawa Sun*, constituted the regional coverage; and *The Globe and Mail* and the *National Post* constituted the national media coverage. Specialized media such as magazines

and smaller publications were separately identified and included *Maclean's*, *Canadian Lawyer*, *The Orator*, and *The Wanderer*.

Number of sources This variable refers to the number of people cited in the story, and examines whether those individuals were directly quoted or whether their words were paraphrased. It assesses which voices were consistently cited in the 1986–2004 time frame. Dr. Young explained that the complexity and quality of a story can be measured by the number of people cited, how much analysis was provided, and the diversity of opinion presented. This variable helps evaluate the amount of research conducted by the journalist for the story.

Kinds of sources Reporters are required to identify the people quoted in a story according to their relevance and association with a particular issue. This variable examines the institutional affiliation or subjective position of the source.

Facts cited A number of key facts in the media coverage were identified as relevant to the allegations. They include whether the media reported the existence of historical abuse of young persons or questioned whether the abuse in fact occurred, whether it reported the existence of a pedophile ring, and whether it discussed if the local and provincial police conducted comprehensive investigations.

Tone “Neutral” refers to news content that did not contain critical commentary; “positive” refers to news content that was laudatory in its comments or in information about the official response; and “negative” refers to criticism in the story regarding various official agencies involved in the allegations, such as criminal justice or other government ministries.

Media Landscape

When examining media content, it is important to study the media landscape for the particular time frame. Factors such as ownership and resources, for example, may have an impact on media coverage. News stories generally begin in the local media and, if considered significant, are covered by regional news media, which in this case were located in Ottawa, and national media such as *The Globe and Mail*, the *National Post*, The Canadian Press, the three national television networks—CTV, Canwest Global, the Canadian Broadcasting Corporation (CBC)—and CBC Radio.

Media economics teaches that a relationship exists between quality and the amount a media outlet invests in news gathering and editorials. Greater media competition and greater financial investment in content result in higher quality news.³ Local community newspapers vary in their level of investment in news stories as well

3. Dr. Young cites Stephen Lacy and Todd F. Simon, *The Economics and Regulation of United States Newspapers* (Norwood, NJ: Ablex Publishing, 1993), in Young Report, p. 10. This relationship between news quality, competition, and investment is known as financial commitment theory.

as in revenue models, from small dailies with weekly paid circulation to local weekly advertisers that supply free distribution with revenues solely from advertisements.

Cornwall's two local newspapers in the 1986–2004 period were the *Standard-Freeholder* and the *Seaway News*. In this nineteen-year period, ownership of the *Standard-Freeholder* changed a number of times. Launched as an independent weekly in the mid-1880s, the *Standard-Freeholder* became a daily newspaper in the late 1940s. It was owned by Thomson Newspapers Inc., proprietor of *The Globe and Mail*, at approximately the time when a Catholic priest in Cornwall, Father Gilles Deslauriers, pleaded guilty in 1986 to four counts of gross indecency involving youth.⁴ In 1996, the *Standard-Freeholder* was bought by Southam-Hollinger, the largest newspaper chain in Canada at the time, and in 2001 it was sold to Osprey Media.⁵ In 2007, the *Standard-Freeholder* was purchased by Quebecor Media Inc., which owns the *Sun* chain of newspapers.⁶ The average daily circulation of the *Standard-Freeholder* is 14,280.⁷ Because the *Standard-Freeholder* changed ownership a number of times in the 1986–2004 period, Dr. Young did not discern a particular ideology associated with this newspaper in this time frame.

The other newspaper in Cornwall, the *Seaway News*, was founded in 1985 by two individuals, Mr. Dick Aubry and Mr. Rick Shaver. In 2007, it was purchased by Transcontinental Inc. The *Seaway News* has a controlled (free) circulation of 34,900.⁸ As an independently controlled weekly, the *Seaway News* has limited reach outside the Cornwall area. By contrast, news content of interest in the *Standard-Freeholder* newspaper was distributed by the Canadian Press wire service in the 1986–2004 period.⁹

Small daily and community newspapers that are part of larger media groups are generally valued for their revenue-generating potential and as training grounds for young journalists, offering lower paid, entry-level jobs that tend to be transient in nature. These smaller newspapers “tend to be seen more as financial assets than news agenda setters, a role left to larger regional dailies.”¹⁰

Regional media included the *Ottawa Citizen* and the *Ottawa Sun*. According to Dr. Young, these media “represent a variety of ideological as well as journalistic traditions.”¹¹ *The Globe and Mail* and *Ottawa Citizen* are considered “newspapers of record”¹² for their respective markets, while papers such as

4. Young Report, pp. 10–11.

5. *Ibid.*, p. 11.

6. *Ibid.*

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

11. *Ibid.*, p. 9.

12. *Ibid.*

the *Ottawa Sun* are tabloids that tend to focus on “a more sensational array of media content.”¹³

Geographic Origins of Media Coverage

The study of media coverage from 1986 to 2004 revealed that the vast proportion of print content—72.1 percent—was local. Most of the stories from the print media originated in the *Standard-Freeholder* and the *Seaway News*. The study found that 23.1 percent of the coverage of the allegations of historical child abuse in Cornwall was from regional sources, the *Ottawa Citizen* and *Ottawa Sun*, and national media accounted for only 1.6 percent. Specialized media—articles in such publications as *The Orator* and *Canadian Lawyer*—constituted 3.2 percent of the coverage.¹⁴

The limited amount of national coverage was a surprise to Dr. Young. She contrasted the Cornwall story to coverage of the Mount Cashel allegations of child sexual abuse in Newfoundland, for example, which received significantly more national media attention.

Peak Years of Media Coverage

The peak year for coverage of the allegations of historical child sexual abuse in Cornwall was 2001, which accounted for 20.9 percent of stories. The other three peak periods were 2000 (18.7% of the coverage), followed by 2002 (11.4%), and 1994 (also 11.4%).¹⁵

These four peak periods corresponded with the following events, discussed in greater detail in this Report:

- 1994 Media access to a victim’s (David Silmsen’s) statement to the police and financial settlement, as well as issues surrounding Perry Dunlop.
- 2000 Perry Dunlop’s resignation from the Cornwall Police Service and initial calls for a public inquiry.
- 2001 Jacques Leduc’s trial¹⁶ and stay of proceedings, as well as issues surrounding Dick Nadeau’s website.
- 2002 The end of Project Truth and its charges against fifteen people on 115 counts of sexual abuse.

13. *Ibid.*

14. *Ibid.*

15. *Ibid.*, p. 11.

16. Jacques Leduc was a lawyer who represented the Diocese. In 1998, he was charged with six counts of sex-related offences. In 1999, there were additional charges. In 2001, there was a stay of proceedings on all charges.

Media Genres

News stories have gradually become longer and more complex over the past century. In an article discussed by Dr. Young, social scientists Barnhurst and Mutz¹⁷ state that news coverage now includes more analysis and places more emphasis on time frames other than the present. Studies indicate that there has been a “shift from descriptive to analytic journalism, from event-centred to interpretative reporting, or from episodic to thematic coverage.”¹⁸ In other words, there has been a movement toward news analysis that examines how and why something may have happened, rather than simply event coverage that reports only that something occurred. According to the Barnhurst and Mutz 1997 study, 40 to 45 percent of stories cover the “how” and “why.”¹⁹

In the media coverage of the Cornwall issue, 67.2 percent of the news content consisted simply of news stories that reported that an event had happened; it did not provide analysis of how or why the historical child sexual abuse occurred in the Cornwall area (Table 4.1).²⁰ Examples of news stories in the 1986–2004 period included the announcement of criminal charges against particular individuals, interviews with politicians about the allegations and the police investigations, and accounts of criminal trials of some of the alleged perpetrators.

Table 4.1
Print News Content by Genre, 1986–2004

	Frequency	Valid percent
News	373	67.2
Brief	39	7.0
Feature/In-depth	29	5.2
Editorial	36	6.5
Column	78	14.1
Total	555	100.0

Only 5.2 percent of the coverage constituted feature/in-depth articles. Dr. Young expected more analysis of the issues, which occurred over a lengthy period:

17. Kevin G. Barnhurst and Diana Mutz, “American Journalism and the Decline in Event-Centred Reporting,” *Journal of Communication*, vol. 47, no. 4 (1997): pp. 27–52.

18. *Ibid.*, pp. 27–28.

19. *Ibid.*, pp. 32–33.

20. Young Report, pp. 11–12.

... [W]hat I find surprising is that the percentage of in-depth analytical pieces are lower than I would think on an issue of this complexity, over this length of time.

... [I]t's not just the allegations of historical child abuse, it's actually the criminal justice response to those kinds of allegations ... [I]t is complex on a number of levels.

Over 20 percent of the information from 1986 to 2004 was opinion content; this included columns and newspaper editorials. Dr. Young considered 20 percent, or one in five articles, a “significant amount of opinion comment.” The columns, for the most part, originated from the two Cornwall newspapers and their two main columnists, who, Dr. Young said, “addressed the problem and allegations from opposing perspectives—often trading barbs with each other in print.”²¹ A few columns also appeared in regional and national media, including two in the *Ottawa Sun* in 1999 that discussed details about the allegations of abuse not addressed in other media.²² There were editorials in the local newspapers and regional daily newspapers such as the *Ottawa Citizen*.²³

The remaining news content (7%) consisted of briefs or short news stories of fewer than three paragraphs.

Columns and editorials are generally used as vehicles to inject in-depth analysis and opinion into the news agenda. Best practices focus on evidence-based reporting methods and argumentation as a means of analyzing and describing events and issues in the public realm.²⁴ This entails confirmation of the accuracy of the information, transparency as to whether the information is speculation or based on evidence, and identification of the source of the evidence.

Kovach and Rosenstiel, well-known and respected media commentators on best practices journalism, state that the discipline of “verification” is what separates journalism from “entertainment, propaganda, fiction or art.”²⁵ It is argued that

21. *Ibid.*, p. 12.

22. *Ibid.*

23. *Ibid.*

24. Philip Meyer, *Precision Journalism: A Reporter's Introduction to Social Science Methods*, 4th ed. (Lanham, MD: Rowman and Littlefield, 2002), cited in Young Report, p. 12. Dr. Young lists a number of sources for information about best practices journalism: Canadian Association of Journalists, *Statement of Principles*; Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What News People Should Know and the Public Should Expect* (New York: Crown Publishers, 2001); the Poynter Institute; and ethics textbooks.

25. Young Report, p. 13; Kovach and Rosenstiel, *The Elements of Journalism*, p. 71, *supra* n. 25.

“only through best practices and ‘precision’ journalism can media fulfill their role in facilitating democracy and the public good.”²⁶

It was Dr. Young’s opinion that “journalistic best practices were not followed in a number of instances” in the sample of Cornwall newspaper columns. As she wrote in her report:²⁷

... [E]xamples from the database indicate that opinion content included speculation, rumour and hyperbole without systematic and evidence-based argumentation in attempts to make sense of the allegations of historical abuse of young persons in the Cornwall area.

Dr. Young provided a number of examples of columns in the Cornwall local media that failed to conform to journalistic best practices. Two such columns were “Not Wearing Any Blinders,” published in the *Standard-Freeholder* on July 25, 1998, and a *Seaway News* column entitled “Champions of Complacency: Claude McIntosh and The Freeholder,” published on August 9, 1998. Most of the information on the allegations of child sexual abuse in Cornwall originated from two columnists from the two local newspapers. These columnists, Dr. Young commented, basically trade barbs with each other.²⁸ An excerpt from a July 1998 issue of the *Standard-Freeholder* is reproduced:

Gotta admit, it was uncomfortable squeezing a size seven ball cap over a size 12 head after reading Bob Roth’s glowing description of this scribbler in last week’s edition of the *Seaway News*.

You know, the one under the headline “Freeholder takes pathetic stand on child abuse issue.”

In that column, Roth raved about this scribbler being his “favorite journalist.”

“Articulate scribe,” Roth said, “doing first-class work.”

This article is essentially a critique of another columnist. It is common in a small town such as Cornwall for journalists and others in the local media to know each other. Local media, Dr. Young explained, sometimes tend to deal with personalities

26. Young Report, p. 13; Kovach and Rosensteel, *The Elements of Journalism*, *supra* n. 25; Meyers, *Precision Journalism*, *supra* n. 25.

27. Young Report, p. 13.

28. *Ibid.*, p. 12.

rather than issues related to events based on research and verification. It is important to note that the *Statement of Principles* of the Canadian Association of Journalists outlines standards that journalists should adhere to; they include accuracy, fairness, balance, and defending the public interest, rather than taking “pot shots” at other journalists. In Dr. Young’s opinion, this column does not conform with best practices journalism.

Similarly, the following excerpt from the column in the *Seaway News* responds to the *Standard-Freeholder* column cited above:

I guess we’re back at it.

I tried to stay away from the “dirty little secret” last week (and did), but I really must respond this week to The Standard-Freeholder’s personal attack on me, the Dunlops and anyone else who doesn’t greet child sexual abuse and institutional break down with a gigantic yawn.

I refer, of course, to the editorial page piece by Associate Editor Claude McIntosh in the July 25 edition of the Freeholder.

It wasn’t an overt attack. Frontal assault is not the Freeholder’s style. So instead of targeting my arguments, Claude chose to fire pot shots at me from the bushes of irrelevance and innuendo.

Claude, as you know, is one of my favorite journalists, but he has become somewhat agitated because I have challenged his foggy thinking on the child abuse issue. In my view, he and his newspaper have taken a timid approach to the appalling failure of Cornwall’s key institutions (e.g. police and church) to tell the truth and protect our children.

...

Instead, the Freeholder’s associate editor makes sneering comments about those who want something done.

This is “unsubstantiated character discussion as opposed to well-sourced comment or analysis,” testified Dr. Young. She described these columns as simply entertainment, providing little information to members of the public to help them understand these important issues of child sexual abuse. Fairness, balance, and analysis, said Dr. Young, constitute best practices journalism.

Dr. Young contrasted these columns with a two-part series in April 1999 by a journalist from the Ottawa bureau of the *Toronto Sun*. In “Coverup or Witchhunt?” and “OPP Defend Pedophile Inquiry: Project Truth Cops Deny Coverup Allegations,” journalist Michael Harris interviewed a number of people, including MPP Gary Guzzo, officers from the Ontario Provincial Police (OPP),

and an individual from the Ministry of the Attorney General. Dr. Young stated that the journalist conducted research, tried to substantiate his opinions, and provided a “higher level” of analysis than the columns in the two local Cornwall newspapers.

Dr. Young provided another example from July 1998 in the *Standard-Freeholder* that, in her view, does not adhere to journalistic best practices. Entitled “Rumor Mill Is Working in Overdrive,” the column discusses an “anonymous” letter, quotes an “old friend,” does not identify sources, and makes problematic claims. The Canadian Association of Journalists *Ethics Guidelines* explicitly state: “We will identify sources of information, except when there is a clear and pressing reason to protect anonymity.”

The remaining news content included briefs (7%), which are shorter than three paragraphs, and features or long-form/in-depth journalism (5.2%).²⁹ Some of the longer-form journalism appeared in *The Globe and Mail* and the *Ottawa Citizen*. *Chatelaine* completed a lengthy feature on Perry and Helen Dunlop, the *Ottawa Sun* published a special report on abuse in the Catholic Church, and *The Orator* published three long features on allegations of historical child sexual abuse in the Cornwall area. These longer-form articles provided some context, “largely absent from the basic news stories.”³⁰

Media Sources

The quantity of sources cited in the print media and the quality of the sources were examined by Dr. Young in this study.

With respect to the number of sources cited in an article, the *Statement of Principles* and *Ethics Guidelines* from the Canadian Association of Journalists state that the more sources and the more diversity of sources, the better the quality of news and information content. On a complex subject such as historical allegations of child sexual abuse, it is expected that a variety of sources will be cited such as officials, experts including psychologists and psychiatrists, and complainants or victims of abuse. The general rule in “hard” news reporting, according to Dr. Young, is three or more sources.

According to the results of the study, approximately half of the print news content in the 1986–2004 period referred either to only one source or to no source at all. In other words, in 50.9 percent of the news articles, a very small number of sources were relied upon to report on the complex allegations of historical sexual abuse of individuals in the Cornwall community (Table 4.2).

29. *Ibid.*, p. 13.

30. *Ibid.*

Table 4.2
Number of Sources in Print News Content, 1986–2004

	Frequency	Valid percent
0	63	11.4
1	219	39.5
2	169	30.5
3	93	16.8
4	11	2.0
Total	555	100.0

Almost one-third (30.5%) of print stories quoted two sources, while only 18.8 percent of stories cited three or four sources.³¹ “The result,” said Dr. Young, “is a body of information that relies on a narrow, limited range of research and knowledge for its content; ... news content with few identified sources” is “constraining and has a negative impact on the community, as well as citizens’ ability to make sense of complex issues or events.”³² To compound the situation, even when newspaper articles quoted two or three sources, they were often from the same sphere of influence; for example, a police officer is cited, then a representative of a different police force, and then a person from the Police Services Board. As Dr. Young explained, “[A] focus on one type of source can result in news content that is ideologically or institutionally biased.”³³

The sources in the first few paragraphs of a news story have the most impact and set the tone for the balance of the article, according to studies of media content.³⁴ Journalists typically place first the people they consider “the most important agenda-setter.” This is because about half the readers are generally lost after the third paragraph of an article.

In the sample of print articles on the historical allegations of sexual abuse in Cornwall, the most common first news source (29.7%) in the 1986–2004 period was a government official (e.g., politician, Crown prosecutor, judge).³⁵ As Table 4.3 indicates, the second most cited source was alleged victims (13.4%), followed by representatives of Project Truth (12.4%).

31. *Ibid.*, p. 14.
32. *Ibid.*
33. *Ibid.*, p. 15.
34. *Ibid.*, p. 14.
35. *Ibid.*

Table 4.3

First Source in Print Media Coverage, 1986–2004

	Frequency	Valid percent
Gov't official	146	29.7
Alleged victim	66	13.4
Project Truth	61	12.4
Other source	43	8.7
Catholic Church	39	7.9
Perry Dunlop	32	6.5
Cornwall Police	32	6.5
Alleged perpetrator	22	4.5
Citizens group	19	3.9
Social agency	15	3.0
Other media	15	3.0
Expert	2	0.4
Total	492	100.0

Note: The total is 492 because 63 articles had no sources.

Other sources included representatives of the Catholic Church (7.9%) and Perry Dunlop (6.5%).³⁶ Interestingly, Perry Dunlop was cited as a first source almost as often as a Catholic Church representative, which Dr. Young said, suggests:³⁷ (1) “an inability or disinterest by media to access information from the Catholic Church and/or hold it and its representatives accountable”; and also that (2) “Dunlop was able to establish himself as a main agenda-setter.”

When Project Truth and the Cornwall Police Service are combined, the result is that the first source in almost one in five articles is the police (18.9%). Other first-cited sources were alleged perpetrators (4.5%), citizens groups (3.9%), which became more active toward the end of the time period, and social agencies (3.0%). Only 0.4% of first-cited sources in the print articles were experts in abuse, clearly a “dearth of experts,” in Dr. Young’s opinion:³⁸

... [T]he extremely small percentage of the news agenda devoted to experts, defined as academics, psychologists and other specialists in

36. *Ibid.*, p. 15.

37. *Ibid.*

38. *Ibid.*, pp. 15–16.

historical abuse claims, indicates a lack of depth and expertise about the psychological, social, cultural and institutional costs of this kind of social problem to a community.

First Fact Cited in Print Media and Tone of Media

Dr. Young examined the first or key fact reported in media coverage of the allegations of historical sexual abuse in Cornwall (Table 4.4). The most referenced first fact in the print media was the existence of a pedophile ring (27.3%). This conformed with journalistic norms of media coverage of sexual abuse in other communities. This was followed by criticism of the Cornwall Police Service, that its investigations were not thorough (20.8%), and that a conspiracy against victims existed in the Cornwall community (15.9%).

Table 4.4
First Fact Cited in Print Media, 1986–2004

	Frequency	Valid percent
Abuse ring	79	27.3
Cornwall Police—not thorough	60	20.8
Conspiracy vs victims	46	15.9
Judicial system—not thorough	29	10.0
Project Truth—not thorough	26	9.0
Abuse claims unsure	24	8.3
Suicide—perpetrator	7	2.4
Suicide—victim	6	2.1
Project Truth—thorough	5	1.7
Judicial system—thorough	4	1.4
Cornwall police—thorough	3	1.0
Total	289	100.0

Note: The total is 289 because some articles referred to none of the facts.

Of note were the “inattention” or “silences” regarding relevant facts, such as the suicide of perpetrators, mentioned as a first fact in only 2.4 percent of the print stories. Journalists often tend not to cover acts of suicide.³⁹ When the

39. *Ibid.*, p. 17.

suicides of individuals were mentioned, there was inconsistency as to the number of suicides that occurred.

The tone of most of the news content—65 percent—was negative. Officials and organizations such as the Cornwall Police Service and Project Truth, responsible for investigating the allegations of historical sexual abuse, were criticized. The fact that about two-thirds of the sample had a negative tone was not a surprise to the media expert. As Dr. Young said, “[N]ews tends to reflect negative changes in the status quo.”

Media Framing

Journalism scholars argue that journalists consciously select certain aspects of a social problem or event and define the social problem or event in a particular way. The manner in which the social problem is constructed or “framed” has an effect on judgments made, as well as on the remedies that are identified. An example of this is Mothers Against Drunk Driving (MADD). The issue was framed in terms of mothers losing their children, which inspired a policy shift or response, rather than in terms of youth in a certain demographic or cultural group engaging in irresponsible behaviour. Another example is the Pickton serial murders in British Columbia. The media frames involved missing women identified as Aboriginal sex trade workers and those who had drug addictions; they were depicted as “not worthy victims” and somewhat “culpable in their own death.” In other words, journalists consciously set up a framework within which to think about a particular issue or event.

The qualitative framing analysis conducted by Dr. Young involved the full sample of news articles on this Cornwall issue. A qualitative “framing” analysis was completed on the entire database of 1,329 print media articles, which included the 244 letters to the editor as well as the 21 broadcast clips. This involved an examination of media content orientations: how particular events or issues were represented or “framed,” and how connections between these events and their possible interpretations or solutions were promoted. As Dr. Young explained, “frames” provide the conceptual structure or framework necessary for the communication of news and information. As one author describes this process, “Frames are principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens and what matters.”⁴⁰

Dr. Young found three key frames in the media coverage of allegations of historical abuse of young persons in Cornwall in the 1986–2004 period. The most prominent and consistent frame was that the Cornwall Police Service and

40. Dr. Young cites Todd Gitlin, *The Whole World Is Watching: Mass Media in the Making and Unmaking of the New Left* (Berkeley, CA: Open University Press, 1980), p. 6, in Young Report, p. 6.

other levels of the criminal justice system were either responsible for the social problem of historical child sexual abuse or, if not responsible, were culpable for their incompetence and ineffectiveness. Secondly, the construction of the issue was determined by “key sources,” the most dominant of which was Perry Dunlop, depicted as a “folk hero” in the media. Thirdly, the content was framed as discrete news events as opposed to a larger, systemic problem. A lack of in-depth investigative journalism was evident in the 1986–2004 period.

The most prominent media frame, as mentioned, was police ineffectiveness. It began in 1993 with the Cornwall Police Service. In 1994, the media reported that the Ottawa Police Service had completed an investigation of the handling by the Cornwall Police of a complaint of abuse in 1992 by alleged victim David Silmser.⁴¹ The Ottawa Police concluded, according to media reports, that there was a “noticeable lack of senior management direction and support through the investigation.” In 1995, the media also reported that an audit by the Solicitor General had described the Cornwall Police in 1993 as “rife with conflict.”

In addition to the criticisms of the Cornwall Police Service, the media reported extensively on Perry Dunlop’s charges under the *Police Services Act* and the subsequent “clearing” of these charges. The 1995 obstruction of justice charges against lawyer Malcolm MacDonald, who represented Father Charles MacDonald,⁴² were also depicted as an example of police ineffectiveness.⁴³ In a 2000 broadcast media news story, police were described as either “incompetent” or “most botched up” in two investigations of allegations of historical abuse.

Concerns about police ineffectiveness shifted from the Cornwall Police Service to the OPP investigation, Project Truth. An article in the *Standard-Freeholder*, “Do We Still Need Project Truth?”⁴⁴ discusses the length and cost of the police investigation:

Project Truth, the Ontario Provincial Police investigation into claims of massive sexual abuse in Cornwall and area, plods along.

It has been plodding along for almost 15 months, making it one of the longest criminal investigations carried out in this neck of the woods ...

...

The cost has been enormous.

41. This investigation is discussed in fuller detail in Chapter 6 of the Report.

42. This is discussed in further detail in Chapter 11 of the Report.

43. Young Report, p. 18.

44. December 18, 1999.

As evidence of OPP ineffectiveness, the media reported that there was only one guilty plea in 2002 out of 115 counts of sexual abuse in which fifteen men were criminally charged. Very few of the articles referred to the second conviction that emerged from Project Truth⁴⁵—Father Paul Lapierre was found guilty in Montreal⁴⁶ and was sentenced to one year in custody and three years probation.

Other institutions, such as the Ministry of Correctional Services, did not have the same media “spotlight” on them. As Dr. Young observed, “[J]ournalistic investigation of issues at the probation office, guidelines about allegations of abuse from Corrections were not followed up.” Given that there were incidents and allegations of abuse involving probation officers, “it would be best practices for journalists to actually look at policies, examine Probation and Corrections, do more investigation and interviewing with respect to that institution” and not focus solely on the police. As Dr. Young said, the “spotlight gets focused on one area,” which “has an impact on how people understand what’s happening in the public realm.”

The second key theme focused on Constable Perry Dunlop, a Cornwall police officer. He was depicted as a “folk hero” who “blew the whistle on the local police and the inadequate investigation of allegations of historical abuse.” It was at this time that the “frame of police and Catholic Church cover-up received more fuel.”⁴⁷ Perry Dunlop became the centre of sustained local media attention and was the catalyst for national coverage such as large news features by *The Globe and Mail* and *Chatelaine*,⁴⁸ as well as an appearance in a documentary by *The Fifth Estate* in 1995.⁴⁹ There was a shift in the nature of media coverage from a discussion of a few disparate and unlinked cases of allegations of historical sexual abuse to the existence of a “pedophile clan” or “pedophile ring.” This continued until Constable Dunlop resigned from the Cornwall Police Service in 2000. The following excerpt from an article in the *Ottawa Sun* is an example of reports that depict both Perry Dunlop and his wife, Helen, as heroes:

Courageous

Perry Dunlop was driven by principle, nothing more, nothing less.

For seven years, the Cornwall police officer aimed a light into the darkest corners of a community’s secrets, exposing what he called a ring of pedophiles that had operated in the city virtually untouched for decades.

45. Young Report, p. 18.

46. In 2004, in Montreal. He was found not guilty at his trial in Ontario. This is discussed in fuller detail in the Report.

47. Young Report, p. 19.

48. *Ibid.*

49. *Ibid.*

For that he was once suspended and on numerous times threatened with worse.

He was often ignored or shunned, even by friends and colleagues, for exposing the dirty little secrets of people who had earned the public's trust and respect as pillars of the community.

Despite a wall of public indifference and outright denial, Perry Dunlop wouldn't stop asking the uncomfortable questions, just as he wouldn't stop answering the door when victim after victim after victim showed up to tell his story to just about the only person in town they thought they could trust.

This week Perry and his equally courageous wife, Helen, announced that after seven long years fighting for the truth on behalf of victims, they were packing up and heading west for a new life.

They're all but broke, having mortgaged the home to the hilt battling one legal action after another. They have no jobs awaiting them.

Not that we worry for them. The courage and perseverance that saw them through these past seven years equip them well for the challenges ahead.

We worry more for the community they leave behind—a community not yet cleansed of the stain of allegations involving abuse laid against numerous individuals.

It took years, but Dunlop's allegations finally prompted a full OPP probe that, to date, has led to more than 100 charges against 14 individuals.

Helen Dunlop says it's only the tip of the iceberg and expresses hope that somebody will pick up where they must leave off.

Hopefully, that will be the case, particularly as MPP Garry Guzzo voices demands for a provincial inquiry into the entire affair.

In the meantime, Cornwall, indeed all Canadians, owe a debt of gratitude to the Dunlops.

It's always easier to join the rest of the crowd in turning away from the scene of a crime, lest we become involved.

The Dunlops refused to turn away.

They became involved, even at enormous personal risk and sacrifice.

Heroes.

The media content of the allegations of historical sexual abuse in Cornwall was generally presented as discrete news events. There was little journalistic investigation or in-depth analysis. As Dr. Young stressed, more analytical and contextual information about the police and the investigations, including the legal issues involved in investigating historical allegations of abuse, would have enabled members of the public to better understand and assess the social problem. Moreover, there were few attempts to link the issues in Cornwall with multi-victim abuse cases in other regions such as Project Guardian in London, Ontario; Project Jericho in Prescott, Ontario; or Mount Cashel in Newfoundland. In Dr. Young's view, there should have been more journalistic research of Perry Dunlop's assertion to the OPP that a "pedophile ring" was operating in the Cornwall area. This claim was not verified by other sources or police agencies at the time. Perry Dunlop had become a "whistleblower"; he was "starting to set the news agenda" and "had become a part of the story." "[C]orroboration," she stressed, is required in a "best practices and objective journalism research model."⁵⁰ As Dr. Young commented, Mr. Dunlop was "potentially not independent."

Dr. Young observed "a number of problematic silences" in the media stories. The fact that a Cornwall area priest, Father Gilles Deslauriers, was convicted of historical sexual abuse in 1986 is mentioned in only a limited number of media accounts in 1993, 1994, and 1995. Also, in Dr. Young's opinion, research into the clergy and Roman Catholic Church "lacks sufficient media attention and rigour" in the print coverage.⁵¹ Few print articles examine the alleged perpetrators in the Church or the Church bureaucracy, leaving this area "uncharacteristically silent."⁵² Accountability questions could have been asked. These silences resulted in a further lack of information to the public.

Dr. Young provided a number of examples of news stories that lack research, analysis, and context. An article published in the *Standard-Freeholder* in March 1999, "MPP Wants Inquiry into Project Truth," contains only one source, Garry Guzzo, and it fails to provide a tie-in to the broader context of this Cornwall social issue. Little information is imparted to members of the public to help them understand the serious allegations of child abuse in their community. Similarly, in "Dunlop Quits City Police," also published in the *Standard-Freeholder*, only one source is quoted and it is not an individual but rather a police statement. Again, little information is conveyed to members of the public to help them comprehend the context of the allegations of sexual abuse by clergy in the Catholic Church and by others in positions of trust in the City of Cornwall.

50. *Ibid.*, p. 20.

51. *Ibid.*, p. 21.

52. *Ibid.*

The media expert contrasted such news stories with a CBC Radio series covering the allegations of sexual abuse in Cornwall entitled *Breach of Trust*, for which the CBC won a national investigative journalism award in 1999. In accordance with best practices, the journalist interviewed several individuals, including victims, the police, and a person who taught Ethics and the Law at a law school in Toronto. The CBC also obtained information on Church documents, court records, Law Society documents, photos, and other relevant written material. Below is an excerpt from the radio story:

... [A]n investigation by CBC Radio News reveals there are photos, old court records, church records and other documents. Yet Project Truth has never asked for any search warrants to obtain them. In some cases interviews with those involved produced new leads that were never followed up. And as each new person comes forward with a story of abuse it opens up a new door.

The radio story discusses the “pedophile ring” in Cornwall:

... how a group of powerful people sexually preyed on generations of young boys in Cornwall, Ontario. Our investigation has found at least 50 people who say they were sexually abused by at least 20 men. The list includes men from the city’s religious, professional and business establishments ... It has taken four separate police investigations to try to uncover activities that were swept under the rug by people in authority in the community.

It describes the alleged perpetrators as including priests and probation officers who were co-workers. It reports that the “Roman Catholic Church struck a deal with a young man who claimed he was abused by a parish priest,” in which \$32,000 was paid to the man in exchange for not pursuing criminal charges. Malcolm MacDonald—the lawyer who represented Father Charles MacDonald, the priest accused of sexual assault—and his conviction for obstruction of justice are discussed. The broadcast also describes the establishment of Project Truth. The OPP was interviewed. The radio transcript states: “[P]olice admit many of the accused know each other and travelled in the same circles.” It also states that three of the suspects had committed suicide. The head of the OPP Criminal Investigation Branch discussed some of the difficulties encountered in investigating historical sexual abuse cases: “Memories fade, people are difficult to locate, documentation is non-existent. There’s also reluctance of victims to disclose that they’ve been sexually abused.”

This series also describes the history of the City of Cornwall, the population, and the socio-economic level of the majority of residents. It conveys the fact that the community is predominantly Catholic; “three out of four people here call themselves Catholic,” stated the radio broadcast.

In her examination of broadcast media framing, Dr. Young examined twenty-one video and audio clips. Although the broadcast coverage framed the allegations in similar ways to the print media, the broadcast media seemed to play more of an agenda-setting role than the print media. An Ottawa television station raised the issue of the 1992 complaint by victim David Silmsen and his financial settlement with the Diocese of Alexandria-Cornwall. The CTV news affiliate in Ottawa broadcast information about this victim’s statement to the police, which was picked up by other media such as the *Ottawa Citizen*.

The broadcast media were the only media to refer to the religious context in Cornwall—that most of the residents are Catholic and attend church regularly. *The Fifth Estate* also provided community context about the impact of the investigation of Father Charles MacDonald and his subsequent removal from the parish. It was reported that “[h]is parishioners were told nothing. He was removed from the parish house quickly, sort of a middle of the night thing.”

Also, as mentioned, the CBC Radio investigative series *Breach of Trust*, prepared by four senior journalists, discussed the existence of a pedophile ring—that about fifty victims claimed they had been sexually abused by twenty men, that three suspects had committed suicide—and it referred to documentary and photographic evidence.⁵³

Dr. Young also examined about 200 letters to the editor. These letters, predominantly in Cornwall-area newspapers, provided both insight and competing information on issues surrounding the allegations of historical sexual abuse. The letters, Dr. Young said, “tell a completely different story about what’s happening to the community”: religious affiliation, internal conflicts, concern about rumours, residents trying to make sense of the allegations. The letters are very emotive and demonstrate how difficult this issue is for this community. Some of the letters complain about the quality of media coverage, the level of hyperbole. As a letter published in the *Seaway News* says, “[W]e are too long on feelings and too short on facts.” It is apparent from the letters to the editor that people are struggling to understand the problem in their community.

Conclusions

A study of print and broadcast media on the historical allegations of sexual abuse of young persons in Cornwall in the 1986–2004 period was conducted

53. *Ibid.*, p. 22.

for the Inquiry. Media expert Dr. Mary Lynn Young concluded that the majority of news and information content originated from local media, which used few sources and which failed to provide “the necessary context and in-depth investigation that would reflect a best practices journalism model.”⁵⁴ As Dr. Young stated, “[T]here was too little fact and too much conjecture.”⁵⁵ When relevant facts were reported, “they were not presented in a coherent narrative—in one place,” to help the public understand the complex institutional and individual issues.⁵⁶

Therefore, the main findings were that there was too much speculation and insufficient facts in the print media, lack of in-depth investigation and analysis, and limited verification of evidence. Dr. Young stated that the local media may not have adequate journalistic training in the coverage of historical sexual abuse claims, it may lack resources, and media accountability mechanisms may be limited in small communities.⁵⁷ Dr. Young stated that there were exceptions to her main findings, “but they were unfortunately few and far between.”⁵⁸

Other important findings from the media study were as follows:⁵⁹

1. The main information communicated to the public on the allegations of historical abuse of young people in Cornwall was framed within a legal context of ineffective policing.
2. The Cornwall Police Service and not other institutions—such as Ministry of Correctional Services or the Catholic Church—became the main media target for public complaint and critique over the period. Other institutions and organizations, said Dr. Young, “should very well have been asked a few more questions.”
3. The key voices and agenda setters in the media were government officials (including MPP Garry Guzzo), the police (including Perry Dunlop), victims, and citizens groups.
4. Issues were presented largely as event-centred news and there was a lack of in-depth analysis, which limited the amount of meaningful information available to the public. There was inadequate journalistic rigour respecting government institutions and their roles regarding the allegations of historical sexual abuse of young people in Cornwall.

54. *Ibid.*, p. 24.

55. *Ibid.*

56. *Ibid.*

57. *Ibid.*

58. *Ibid.*

59. *Ibid.*, pp. 24–25.

5. The geographic diffusion pattern shows that coverage of the allegations originated largely in the local media, with sporadic coverage by regional and national media. Regional media became interested in the Cornwall issue in 1994. The national media became more interested in the Cornwall issue in 1995, as a result of charges against Perry Dunlop under the *Police Services Act*.
6. Peak coverage in the 1986–2004 period occurred in four years, which corresponded with particular events:
 - a. media coverage in 1994 of the statement to police by complainant David Silmser and the financial settlement;
 - b. initial calls for a public inquiry and Constable Perry Dunlop's resignation in 2000;
 - c. the Leduc trial and stay of proceedings in 2001; and
 - d. the end of Project Truth and charges against fifteen people on 115 counts of sexual abuse in 2002.
7. Media periodization of the incidence of historical abuse in the Cornwall area was largely incorrect. Media coverage, for the most part, constructed events around the allegations of David Silmser's complaint and subsequent financial settlement. This focus neglected the fact that a priest in the Cornwall area, Father Gilles Deslauriers, had been convicted in 1986 of historical sexual abuse involving incidents that occurred in the 1970s. This is referred to in only a limited number of media accounts and was not extensively followed up.

Dr. Young concluded her report with the following statement:⁶⁰

In Cornwall, journalists barely scratched the surface and let one of the largest stories in the community remain clouded in rumours and allegations for more than two decades. It shows that best practices journalism matters for accountability and the ability of citizens to make sense of important issues in their community.

Media coverage of the Cornwall issue on the whole “lacked in-depth analysis” and “verification and systematic sourcing.” In Dr. Young's opinion, “[T]he citizens of Cornwall could have been better served” had the media quality been better.

60. *Ibid.*, p. 26.

In my view, Dr. Mary Lynn Young provided valuable expert evidence on media coverage from 1986 to 2004 of allegations of historical abuse of young persons in the Cornwall area. Her analysis of print and broadcast reports provided insight to the parties at the Inquiry and to members of the public on the quality and quantity of information conveyed about allegations of historical sexual abuse in this part of eastern Ontario.

Institutional Response of the Ministry of Community Safety and Correctional Services

Introduction

The Ministry of Community Safety and Correctional Services (MCSCS) is responsible for establishing, maintaining, operating, and monitoring correctional institutions and probation and parole offices in Ontario.¹ The Ministry currently has jurisdiction over offenders eighteen years and older who are on probation or are under conditional sentence orders requiring community supervision. It is also responsible for offenders under parole supervision. The Ministry operates over thirty correctional facilities: jails and detention centres. There are approximately 120 probation and parole offices in Ontario.

Over the years, Correctional Services has expanded its programs and services. The Ministry provides custodial facilities, parole and probation offices, and community supervision; it offers community programs for offenders; it prepares reports for the courts to assist in sentencing convicted offenders; and it implements programs on prevention of crime.

Correctional Services is currently part of the MCSCS. In the past, it has existed as a separate ministry, the Ministry of Correctional Services, and has also been combined with other ministries such as the Ministry of the Solicitor General and the Ministry of Public Safety and Security.

Probation Services

Probation services have undergone many changes in previous decades. A number of different ministries and organizations have been involved in providing probation services for children, youth, and adults. Moreover, there have been

1. MCSCS corporate presentation. M. Hughes, J. Bunton, and G. Semple provided an overview of the Ministry of Community Safety and Correctional Services.

different philosophies regarding appropriate interventions for children, youth, and adults.

In the early part of the last century, Children's Aid Society workers and "other persons" were appointed as probation officers under the *Juvenile Courts Act*. Later, probation officers were appointed by Order-in-Council under the Ontario *Probation Act*. They were responsible to local courts. In 1952, a provincial probation service was established, at which time probation officers reported to a Director of Probation Services, who in turn reported to the Attorney General.

Until 1971, the Ministry of the Attorney General provided all probation services, including those for youth under the age of sixteen. In 1972, the Ministry of Correctional Services assumed responsibility for probation services from the Ministry of the Attorney General.

Prior to 1977, correctional services for juveniles under the age of sixteen were administered by the Juvenile Division of the Ministry of Correctional Services. Many of these programs were delivered through residential training schools. In 1977, juvenile corrections programs became the responsibility of the Children's Services Division of the Ministry of Community and Social Services (MCSS). Sixteen- and seventeen-year-olds continued to be the responsibility of the Ministry of Correctional Services.

In 1985, after the implementation of the *Young Offenders Act*, the Ministry of Correctional Services provided supervision of and programming to sixteen- and seventeen-year-olds² as youths, rather than as part of the adult system. Although Correctional Services under the MCSCS has now been transformed into an exclusively adult-focused provincial corrections system, in the past it delivered services to youth.

Legislative changes played a large part in the type of services provided to children and youth, through the enactment of the *Juvenile Delinquents Act*, the *Young Offenders Act*, and the *Youth Criminal Justice Act*.

There have been three significant changes in federal legislative approaches that have had an impact on the delivery of the youth justice service in the past hundred years. The first shift occurred at the beginning of the last century with a paternalistic approach to children and youths who committed crimes. The second, which followed in the 1980s, was a legalistic approach to youth in trouble with the law. The latest shift has been to a holistic approach to youth, in response to statistics that indicate that young people in Canada have been incarcerated at higher rates than in other Western countries.

2. Phase 2 youth are sixteen- and seventeen-year-olds. Phase 1 youth are twelve- to fifteen-year-olds.

The federal government enacted the *Juvenile Delinquents Act* in 1908. The *Act* created a juvenile justice and corrections system with a social welfare—oriented philosophy. Under the statute, children could be subjected to delinquency proceedings for violating any federal, provincial, or municipal law, or for an offence of “sexual immorality or any similar form of vice.”³ The *Juvenile Delinquents Act* required judges to treat a delinquent not as a criminal but as a “misdirected and misguided child.”⁴ Under the *Act*, due process rights were minimized in the interests of an informal process and the promotion of the welfare of children.

The *Young Offenders Act*, enacted in 1984, replaced the *Juvenile Delinquents Act*. It was, in part, a response to the 1982 *Canadian Charter of Rights and Freedoms*,⁵ which guarantees legal rights such as the right to life, liberty, and security of the person. There was a concern that the provisions in the *Juvenile Delinquents Act* did not protect legal rights guaranteed in the *Charter*. The *Young Offenders Act* moved away from the child welfare approach of the *Juvenile Delinquents Act*. Although the *Young Offenders Act* continued to make a distinction between youth and adult crime, it attempted to make young people more accountable for their actions. By virtue of the *Act*, Phase 2 youth—sixteen- to seventeen-year-old young offenders—were placed under the jurisdiction of Correctional Services.

The *Youth Criminal Justice Act*⁶ came into force in 2003, replacing the *Young Offenders Act*. One of its main objectives is to ensure that the formal justice system is used more selectively by reducing excessive reliance on incarceration and increasing the reintegration of young people into the community following custody.

In 2004, the Ministry of Children and Youth Services was created. All services for young offenders under the age of eighteen have become the responsibility of the Ministry of Children and Youth Services. Phase 1 and Phase 2 offenders were moved from their previous ministries to this new, specialized ministry. Previously, Phase 1 youth, aged twelve to fifteen, had been the responsibility of the Ministry of Community and Social Services, while Phase 2 youth, aged sixteen and seventeen, were under the Ministry of Correctional Services.

3. *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, under definition of “juvenile delinquent” in s. 2(1).

4. S. 38.

5. *Canadian Charter of Rights and Freedoms*, enacted as Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* (1982) (U.K.), 1982, c. 11.

6. *Youth Criminal Justice Act*, S.C. 2002, c. 1.

Duties of Probation Officers

The *Ministry of Correctional Services Act*⁷ specifies the duties for probation and parole officers. The responsibilities of an adult probation officer include preparation of court-ordered reports such as pre-sentence reports, reports for conditional sentences,⁸ post-sentence reports, and pre-parole reports for the Ontario Parole and Earned Release Board. Section 44(1) of the *Ministry of Correctional Services Act* delineates the duties of a probation officer with regard to reporting information to the court relevant to a disposition. Probation officers also make recommendations regarding community programs and supervision. Section 44(3) of the *Act* states that probation officers must perform other duties as assigned by the Minister, such as liaison with community agencies, community correctional stakeholders, the public, and victims. Probation officers have operational duties. They are expected to develop supervision plans, monitor and enforce probation conditions, conduct facility and community home interviews, implement offender rehabilitation plans, and liaise with Crown attorneys, the courts, and other community agencies.

There are two levels of probation officers. PO-1s are entry-level probation officers, and PO-2s are fully trained and have been probation officers for at least two years.

When the Ministry of Correctional Services had responsibility for cases involving children and youth, the duties of probation officers were similar to those described above. Probation officers prepared supervision plans for young offenders based on need and risk. They were also responsible for supervision as well as enforcement of court-ordered community-based sentences.

This chapter, on the institutional response of the Ministry of Community Safety and Correctional Services, as it is now known, begins with a discussion of problems confronting the Cornwall Probation and Parole Office. Allegations by probationers of sexual abuse by Cornwall probation officers came to the attention of the Area Manager in the early 1980s. Staff in the Cornwall office noticed inappropriate conduct by employees in that office. The response of the Ministry and its employees to allegations of abuse by probationers and former probationers, and to admissions by probation officers of sexual improprieties or other

7. *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22.

8. With the implementation of Bill C-41 in 1996, conditional sentences became a sentencing option.

The *Criminal Code* permits an offender to be released on a conditional sentence when the offence is not punishable by a minimum term of imprisonment, the court imposes a sentence of imprisonment of less than two years, and the court is satisfied that serving the sentence in the community would not endanger the community and it would be consistent with the fundamental purpose and principles of sentencing.

inappropriate conduct, are discussed in detail in this chapter. Woven through the sections are recommendations that address such issues as training on male sexual victimization, conflict of interest principles, information sharing, institutional memory, critical incident information management, and audits and reviews of files of probation officers and other Ministry staff.

Area Manager of the Cornwall Probation Office Receives a Serious Complaint Regarding Probation Officer Nelson Barque

When Peter Sirrs arrived in Cornwall to assume the position of Area Manager of the Cornwall Probation and Parole Office in September 1981, the office was located at 340 Pitt Street.⁹ The police were located on the main floor, the courts on the second and third floors, and the probation office on the fourth floor.

Nelson Barque had been a probation officer for about seven years when Mr. Sirrs became the on-site Area Manager in Cornwall. Other probation officers in Cornwall at that time were Ken Seguin, Jos van Diepen, and Stewart Rousseau. The support staff were Marcelle Léger and Louise Quinn. Prior to Mr. Sirrs' arrival as Area Manager, the Cornwall Probation Office had been supervised remotely; there had been no on-site managers.

Mr. Sirrs had been in the Canadian Air Force for ten years before his career at the Ministry of Correctional Services as a probation officer and then as Area Manager of the Cornwall Probation Office. Two of his staff, Mr. Barque and Mr. Seguin, had studied theology in preparation for careers in the priesthood. Mr. Seguin had studied at Saint Paul University in 1968, as did Mr. Barque in the early 1970s. Both these men decided not to pursue careers as priests, but instead became probation officers at the Cornwall Probation Office.

The probation office moved to 502 Pitt Street in October 1981, one month after Peter Sirrs became the Area Manager. Unlike in the previous location, at the new premises each probation officer had a private office. At 502 Pitt Street, the Royal Canadian Mounted Police (RCMP) were on the first floor of the building, and Malcolm MacDonald had his law office in the basement. The probation office shared the second floor with the Ministry of Community and Social Services.

Both Ken Seguin and Jos van Diepen had also applied for the position of Area Manager at the time when Peter Sirrs was the successful candidate. Mr. van Diepen listed Malcolm MacDonald as a reference on his curriculum vitae at that time. He testified that Mr. MacDonald had the title of Q.C. (Queen's Counsel)

9. This was the Court Building. The Cornwall Probation and Parole Office will also be referred to in this Report as the Cornwall Probation Office.

and that the lawyer was also a Grand Knight of the Knights of Columbus. It was Mr. van Diepen's objective to provide references from people who knew him and had a position of responsibility and credibility in the community. Mr. van Diepen considered that he knew Mr. MacDonald fairly well. Mr. Seguin and Mr. MacDonald also knew each other and were, in fact, friends. Prior to September 1981, both Mr. van Diepen and Mr. Seguin were told that they had not been selected for the position of Area Manager at the Cornwall Probation Office.

The hours of the Cornwall Probation Office at the new premises remained 8:30 a.m. to 4:30 or 5:00 p.m. One evening each month, generally the last Thursday of the month, probation officers would meet with clients. The evening hours were approximately 6:30 or 7:00 p.m. until 8:00 or 9:00 p.m. Probation officers were required to record all contacts with their clients, including telephone communication. Mr. Sirrs testified that although it was the "preferred practice" for support staff to be present when a probation officer met with a client at the office at night, this did not occur "in every case." Nor was the presence of a second probation officer required when clients had appointments at the Pitt Street office in the evening.

As explained by Mr. Sirrs, one of his major responsibilities as Area Manager was to conduct case audits as well as performance appraisals. His role was to examine the files of the probation officers to assess the frequency and time of their meetings with probationers, whether they were making proper notations, and whether the supervision of probationers was in compliance with the particular probation orders. Case audits of PO-1s were conducted every six months and all their case files were reviewed. The PO-2s were subjected to an annual audit in which about 10 percent of their files were examined. Mr. Sirrs was responsible for ensuring that Ministry guidelines, policies, and procedures were followed by the probation officers in the Cornwall office.

Mr. Sirrs was Nelson Barque's supervisor from September 1, 1981, when he became Area Manager of the Cornwall office, until May 1982, when Mr. Barque tendered his resignation. Until a complaint concerning Mr. Barque was made to the Cornwall Probation Office in April 1982, Mr. Sirrs considered Nelson Barque's performance satisfactory. He found Mr. Barque to be cooperative, punctual, and receptive to suggestions. But Mr. Sirrs' perceptions of Mr. Barque changed on April 8, 1982, when a telephone call was received at the Cornwall office.

Complaint to the Cornwall Probation Office About Nelson Barque

In the first week of April 1982, Marcelle Léger, administrative assistant to Mr. Sirrs, received a telephone call from Ronald St. Louis. He began to complain to Ms Léger about probation officer Nelson Barque. Ms Léger explained that

the Area Manager was not in the Cornwall office at the time but that she would give Mr. St. Louis' telephone number to Mr. Sirrs upon his return.

Mr. Sirrs received a call from Mr. St. Louis on April 8, 1982. Mr. St. Louis reported that a probationer, Robert Sheets, was engaged in a "flagrant use of alcohol and drugs" in contravention of his probation order.¹⁰ His complaint was directed against probation officer Nelson Barque for his inadequate supervision of Mr. Sheets. Robert Sheets was a boarder at the residence of Mr. St. Louis.

Mr. St. Louis reported an incident to Mr. Sirrs in which Robert Sheets had become violent while under the influence of alcohol and initiated a fight with two people. There was considerable damage to Mr. St. Louis' home and Mr. Sheets had threatened him with personal injury. Mr. St. Louis said he had reported this incident to the Cornwall police, who had referred him to Nelson Barque.

In this call, Mr. St. Louis expressed serious concern to Mr. Sirrs about Mr. Barque's supervision of probationer Robert Sheets. Mr. St. Louis claimed that not only was Mr. Barque aware of Mr. Sheets' use of drugs and alcohol but that the probation officer had in fact provided these substances to Mr. Sheets, in violation of the probation order. Mr. St. Louis also alleged that Mr. Barque was sexually involved with probationer Robert Sheets.

On the same day that Mr. Sirrs received this complaint,¹¹ he contacted Mr. E.B. Toffelmire, Regional Administrator (Eastern Region) of Probation and Parole Services of the Ministry of Correctional Services.¹² Mr. Toffelmire suggested that Peter Sirrs discuss the complaint with Mr. S. Teggart, Director of the Inspection and Investigation Branch, who in turn recommended that Mr. Sirrs conduct a preliminary investigation. It was suggested that Mr. Sirrs speak with the persons involved in the incident, including the victim and the police. The preliminary investigation was considered to be urgent.

Peter Sirrs Conducts a Preliminary Investigation

Mr. Sirrs contacted the Cornwall Police Service (CPS) and met with Sergeants Masson and Laroche on April 9, 1982. These officers discussed incident reports in their possession that pertained to Mr. Barque. They informed Mr. Sirrs that they

10. Robert Sheets at nineteen years old was convicted of assaulting a peace officer in 1982 and was sentenced to three months imprisonment followed by two years probation. Some of the conditions of his probation were to report to his probation officer, to refrain from the consumption of alcoholic beverages and the use of non-medicinal drugs, not to enter licensed premises with the exception of a restaurant, and not to purchase alcoholic beverages.

11. April 8, 1982.

12. The position of Regional Administrator is also known as Regional Manager.

had received complaints about Mr. Barque from maintenance staff at 340 Pitt Street through the building supervisor, Mr. Gerald Levert. Mr. Levert had told the police that some of his staff had observed unusual activity involving Nelson Barque and young males in the evening, in and around the probation office. Both Sergeant Masson and Sergeant Laroche were also aware of rumours concerning the relationship between Mr. Barque and Mr. Sheets.

Mr. Sirrs also learned that the police had referred Mr. St. Louis to Mr. Barque, Robert Sheets' probation officer. Mr. Barque had met with Staff Sergeant Maurice Allaire of the CPS and Mr. Keith Jodoin, Justice of the Peace and Administrator of the Provincial Court. Mr. Barque had discouraged the police from pursuing the matter further. He had indicated that he would take action with respect to Mr. Sheets' inappropriate behaviour and report back to Staff Sergeant Allaire. But Mr. Barque did not execute these undertakings, according to the information obtained by Mr. Sirrs.¹³

Sergeant Masson told Peter Sirrs that he had informally counselled Mr. Barque regarding these rumours and his relationship with probationers, particularly Robert Sheets. The Cornwall police officer reported that Mr. Barque had acknowledged that he needed to do something about this.

Sergeant Masson also told Mr. Sirrs that on several occasions, Mr. Barque had attempted to persuade the CPS not to proceed with actions against particular probationers. In one circumstance, when Sergeant Masson was laying a charge against Robert Sheets, Mr. Barque was cautioned that he would be charged with obstruction if he continued to interfere with the police. Mr. Sirrs learned that incidents of a similar nature had occurred with other police officers. It was Sergeant Masson's view that Mr. Barque was too frequently in the company of Robert Sheets.

Mr. Sirrs also contacted the RCMP, whose offices were in the same building as the probation office, at 502 Pitt Street. He met with Sergeant Wayne Isbester, Detachment Commander of the RCMP, who confirmed that he too had heard rumours about Mr. Barque's relationship with Robert Sheets and Mr. Barque's disregard of his client's use of alcohol and drugs.

When Mr. Sirrs met with the RCMP and the CPS, he asked whether he should be concerned about other employees in the Cornwall Probation Office. Mr. Sirrs was told that no concerns existed with respect to other employees in the office.

Mr. Sirrs also interviewed several janitorial staff who worked at 340 Pitt Street, the former premises of the Cornwall Probation Office: John Viau, Lionel

13. Peter Sirrs learned this from the police.

Benoit, Gerald Desnoyers, and another member of the janitorial staff who wished to remain unnamed. Mr. Viau reported that when he was working one evening on the fourth floor of the building, which was where the probation office was located, he saw a young male with a small black moustache. The young man said that Nelson Barque had given him access to this area.

Another member of the janitorial staff, Gerald Desnoyers, stated that at about 11:45 p.m., he went to the fourth floor to look for one of the other janitors. As he walked out of the elevator, he saw Mr. Barque, shirtless and barefoot and carrying two jugs of water. Upon seeing Mr. Desnoyers, Mr. Barque quickly walked into the probation office.

Mr. Benoit reported to Mr. Sirrs that on Mr. Barque's request, he stayed away from the area of the probation office. Nelson Barque told the cleaner that he did not want to be disturbed.

On April 14, 1982, Mr. Sirrs met with Mr. St. Louis, C-44, and C-44's father. Mr. Barque's probationer, C-44, had been living at Mr. St. Louis' house as a boarder. Mr. Sirrs learned that Mr. Barque made telephone calls to the St. Louis residence, often late at night, and sometimes visited the house.

C-44 told Mr. Sirrs that Mr. Barque knew that Robert Sheets and C-44 used drugs and alcohol. In fact, he said that both he and Robert Sheets had reported to the Cornwall Probation Office under the influence of these substances. C-44 also relayed that Mr. Barque brought homemade wine to him and Robert Sheets at the St. Louis home. In addition, C-44 reported that Mr. Barque had offered him wine at the Cornwall Probation Office and treated him to an alcoholic beverage at a restaurant in the Cornwall Square mall. C-44's father also told Mr. Sirrs that Mr. Barque had come to his home and given money to C-44 to purchase beer.¹⁴ As Mr. Sirrs wrote in his April 1982 report to Mr. Toffelmire, "[T]hese alleged incidents are in direct contravention of conditions on Probation Orders issued against both [C-44] and Sheets."¹⁵

C-44 disclosed to Mr. Sirrs that Mr. Barque had engaged in sexual acts with him at the Cornwall Probation Office and at the probation officer's home. As Mr. Sirrs wrote in his report, C-44:

14. In January 1980, when he was eighteen years old, C-44 began his probation for convictions on a number of criminal offences. His probation officer was Nelson Barque. He was convicted of break and enter in December 1980 and in December 1981 of theft. Nelson Barque was again designated in intake information as C-44's probation officer. The conditions of his probation included reporting to his probation officer and refraining from the use of alcohol and non-medicinal drugs.

15. The probation orders of both Robert Sheets, dated January 14, 1982, and C-44, dated December 23, 1981, state that these probationers must abstain from alcohol.

... was un-equivocal in his admission he had engaged in homosexual activity with Mr. Barque on several occasions at both Mr. Barque's home and at the Probation Office. On other occasions, Mr. Barque had made sexual advances to [C-44] verbally and physically which were rebuffed. (Emphasis added)

Mr. Sirrs considered these allegations of sexual involvement with clients to be “extremely serious.” Mr. Barque was in a “[p]osition of authority, position of trust ... It was clearly contrary to Ministry and government policy ... [I]t was just the most serious of the issues.”

The issue of whether the relationship was consensual was irrelevant for the Area Manager of the Cornwall Probation Office. In Mr. Sirrs' words, “[I]t was just inappropriate to be so involved with clients.” In his report of April 20, 1982, he wrote: “When it involves clients, probationers or parolees, a distinction cannot be made between the personal and the professional.”

Mr. Sirrs was disturbed by these revelations. He was also “very disappointed” with the police for not discussing Mr. Barque's inappropriate behaviour with him. Mr. Barque was interfering with or obstructing the police in their dealings with probationers, and the Area Manager of the Cornwall Probation Office expected to be given this information. Moreover, it concerned Mr. Sirrs that the police had not taken action with regard to the complaint of Mr. Levert and his janitorial staff. At least three police officers and Justice of the Peace Jodoin had information that Mr. Barque was sexually involved with or acting inappropriately with probationers, yet no action had been taken. In Mr. Sirrs' view, members of the criminal justice system had “overlooked” Mr. Barque's behaviour in efforts to protect him: “It was my sense that they regarded probation officers to some degree as colleagues, and in the same way that police have often overlooked behaviour on the part of their colleagues.”

In my view, it was important for the Cornwall Police Service to provide this information regarding Mr. Barque's inappropriate conduct with probationers to the Area Manager of the Cornwall Probation Office and to other senior officials at the Ministry of Correctional Services, including the Regional Administrator. Mr. Barque was in a position of trust with regard to the probationers under his supervision. Mr. Barque was not only ignoring the probation conditions mandated by the courts but he was, in fact, facilitating the breach of his clients' probation. With this information, Ministry officials could have taken immediate steps to stop this highly inappropriate conduct of Mr. Barque with probation clients. Had the police provided this information to Ministry officials, other probationers supervised by Mr. Barque might not have been placed at risk.

Deputy Minister Deborah Newman recommended in her testimony that the Ministry of Community Safety and Correctional Services develop a protocol

with Justice partners, police, and the Crown to share information regarding allegations of sexual impropriety and other information. In my view, this is long overdue.

A Lock on Nelson Barque's Office Door and Pornographic Material in His Office

During the course of his investigation, Mr. Sirrs discovered that Mr. Barque had a lock on his door at the Cornwall office at 502 Pitt Street. The lock was not observable from the hallway. Mr. Sirrs made this discovery after he received the complaint from Mr. St. Louis in early April 1982. The lock was on the inside of Mr. Barque's office, which Mr. Sirrs described as a "standard bathroom door lock handle." He assumed that Mr. Barque had installed the lock. Mr. Sirrs had the lock removed after he made this discovery.

Marcelle Léger, an administrative assistant at the Cornwall Probation Office, was interviewed by the Ontario Provincial Police several years later, in 1995. Although Ms Léger claimed that she had no recollection of the interview, Detective Constable Zebruck's notes contain the following statement from Ms Léger: "Nelson had a lock put on his door. Installed soft lighting in his office claiming that it was more relaxing to interview clients at night." Ms Léger testified that she did not know when the lock was installed on Mr. Barque's door. Detective Constable Zebruck's notes also contain the following statement from this interview: "Liked to have younger clients. Wanted the ones charged with sexual offences."

When Ms Léger gave her evidence at the Inquiry, she claimed she had no recollection of Mr. Barque making any such requests to her. She also maintained that she had no memory of making these statements to Detective Constable Zebruck. I find it surprising that Ms Léger has no recollection of either the interview by Detective Constable Zebruck or of comments made to her by Mr. Barque such as his preference for younger clients and those charged with sexual offences.

Another statement from Marcelle Léger contained in the police notes says: "Some of his probationers would come more often than would be required." Ms Léger confirmed in her evidence that some of Mr. Barque's probationers "would just show up at the office without an appointment" and ask to see Mr. Barque. A further inscription in Detective Constable Zebruck's notes states: "Nelson would keep his clients in his office after hrs, tell staff to lock the door as they left; didn't want to be disturbed." Ms Léger stated that she would leave the office as soon as the last client had reported and lock the door of the probation office. It is evident that Ms Léger knew that the probationers would come to the probation office and visit Mr. Barque when they did not have scheduled

appointments. She also knew that Mr. Barque had clients in his office after hours and that he instructed staff to lock the probation office door when they left the premises so that he would not be disturbed.

Louise Quinn was another administrative assistant in the Cornwall Probation Office. She was hired in 1974 as a secretary and remained in that position until 1995, at which time she became a probation officer. Ms Quinn testified she had no concerns that Mr. Barque was acting inappropriately with any of his clients. But clearly Ms Quinn noticed suspicious circumstances that, in hindsight, she agreed she should have perhaps discussed with the Area Manager of the Cornwall Probation Office. One such situation was when Mr. Barque telephoned Ms Quinn from outside the office and asked her to retrieve a file from his desk drawer. When Ms Quinn “opened the drawer,” she saw “pornographic material, magazines with explicit young boys.” She thought it was “very strange that he had such material in the drawer.” When Mr. Barque returned to the office, Ms Quinn asked him why he had this material. Mr. Barque explained that he had confiscated the magazines from a client. But Ms Quinn wondered why the pornographic material had not been destroyed by the probation officer. “Thinking back ... maybe it was a sign, but I didn’t take it as a sign back then,” she said at the hearings. In retrospect, Ms Quinn agreed that perhaps she should have discussed her discovery with Mr. Sirrs: “[M]aybe I should have raised that issue with the manager, but I didn’t at that time ... [Mr. Barque] gave me an answer that I felt comfortable with at the time.”

When Detective Constable Zebruck interviewed Ms Quinn several years later, she reported the following: “Saw homosexual porn magazines in his desk. Also magazines of naked young boys, some performing sex acts ... Asked Nelson why ... clothes were in the desk and he told me that [name removed] changed clothes there occasionally.” She also told the police, “Nelson had mentioned that he had homosexual relationships in the past when he was younger.”

Ms Quinn thought Mr. Barque was perhaps too involved with his clients but rationalized that “it was a social worker side of him.” She testified that given current greater awareness of sexual issues, her views and reactions would probably be different now if she discovered pornographic magazines or such clothing in the probation office:

... I’m sure it’s something that would have to be reported to the area manager. We are much more aware of those things today than we were 20, even 10 years ago. We’re being trained now ... We have ... policies about sexual offenders.

We know much more—it’s much more in our faces now than it was in those days and *certainly if I were to see any of those things happening*

today, such as the pornographic material, the clothing in the office, my view on that would be much more different now than it was looking back, you know, 20, 30 years ago. (Emphasis added)

Probation officer Jos van Diepen was another person in the Cornwall office who discovered pornographic material in Mr. Barque's office. Mr. van Diepen also had suspicions about Mr. Barque's relationship with probationers.

When Mr. van Diepen began his employment at the Cornwall Probation Office at 340 Pitt Street in 1976, there was not sufficient space for each probation officer to have a private office. As a result, Mr. van Diepen would use the offices of colleagues to interview clients. Mr. van Diepen was in Mr. Barque's office on one such occasion, in his first year as a probation officer. He opened Mr. Barque's desk drawer to search for a pen and discovered pornographic material, a paperback book with drawings of paired males in various sexual positions, and some *Playboy* magazines. He also found handcuffs in Mr. Barque's office.

Mr. van Diepen claimed he reported this discovery of "inappropriate" material to Ken Seguin, the senior probation officer in the Cornwall office, who assured him that he would deal with this issue. But Mr. van Diepen did not know whether there was follow-up with Mr. Barque regarding the pornographic magazines and drawings in his office. Nor did Mr. van Diepen take any measures to determine whether this had been pursued by officials at the Ministry.

When Mr. Paul Downing, Special Investigator for the Ministry, interviewed him in 2000, Mr. van Diepen claimed that after Mr. Barque had resigned from the Cornwall Probation Office in 1982, he had an "informal discussion" with Mr. Sirrs about the pornography found in Mr. Barque's desk drawer. In response to Mr. Downing's questioning as to whether he should have advised management of the pornography at the time it was discovered, Mr. van Diepen agreed that, in hindsight, he ought to have conveyed this information to a person in a management position at the Ministry.

Mr. van Diepen testified that this incident caused him to have "some doubts" about Mr. Barque's sexual orientation. Although Mr. Barque was married and had a child, as a result of this discovery, Mr. van Diepen questioned whether Mr. Barque was "exclusively heterosexual."

Another issue of concern regarding Mr. Barque also occurred in Mr. van Diepen's first year as a probation officer at the Cornwall office. In 1976, Mr. van Diepen had a seventeen-year-old client who had serious problems and was unable to live at home. Mr. Barque suggested that this probationer reside with Father Charles MacDonald, a parish priest in St. Raphael's, northeast of Cornwall in Glengarry County. The church needed a janitor/groundskeeper, and Mr. van Diepen considered this a good opportunity for his client to work and have a place to live, and that it would help ensure he did not get involved in further difficulties.

Within less than a week of his stay in St. Raphael's, the probationer returned to Cornwall and told Mr. van Diepen that he refused to remain at this parish because "Father Charles was a queer" who "liked little boys." The probationer told Mr. van Diepen that he had woken up to find Father Charles sitting on his bed. The seventeen-year-old did not provide further details.

Mr. van Diepen was "upset" and "angry" with Mr. Barque for suggesting this placement for his probationer and was concerned about the information that had been conveyed by the seventeen-year-old. Mr. Barque had placed a probation client "in a situation of risk" and "knew or ought to have known that that was not an appropriate placement." Mr. van Diepen considered it his role "to protect that individual." He decided to discuss this with Mr. Ken Seguin, the senior probation officer in the Cornwall office.¹⁶ As mentioned, there was no on-site manager at the Cornwall Probation Office until the early 1980s. Because of Mr. van Diepen's concern that Father MacDonald had sexual intentions regarding the probationer, he asked Mr. Seguin if the priest was gay. Mr. Seguin's response was that Father MacDonald was not gay but that Mr. van Diepen ought not to have placed the probationer with this priest. Mr. van Diepen was not aware at this time that Father Charles MacDonald and Mr. Seguin had a close friendship. In fact, Father MacDonald and Mr. Seguin had been in the seminary together.¹⁷

Jos van Diepen testified that in 1976 he was concerned about the vulnerability of children who had contact with Father MacDonald. Mr. van Diepen knew that Father MacDonald continued to be a parish priest for many years after 1976. He claimed that he expressed his concerns to Mr. Seguin, believing that was sufficient. Mr. van Diepen did not discuss the issue with management at the Ministry of Correctional Services, nor did he contact the Children's Aid Society. As he said in his evidence, "I felt that I did what was appropriate" and that it was not necessary to take any further actions.

Mr. van Diepen claimed that in 1976 he reported the pornographic material and handcuffs found in Mr. Barque's desk drawer to Mr. Seguin. He also claimed that in the same year, he told Mr. Seguin about Mr. Barque's inappropriate suggestion to send the probationer to live with Father MacDonald and to work at his parish. Yet Mr. van Diepen said he had "no knowledge of what happened" with

16. Jos van Diepen testified that he was told by Ken Mitchell, the Area Manager at the time, that he was to report matters to Ken Seguin.

17. In 1968, Ken Seguin studied theology at Saint Paul Seminary at the University of Ottawa. Father Charles MacDonald studied there between 1963 and 1969. Nelson Barque studied theology at Saint Paul from 1970 to 1971.

regard to these issues. Mr. Barque continued in his position as a probation officer, and Father MacDonald remained a parish priest for many years.

Mr. van Diepen agreed that follow-up was important. He did not discuss these matters with the Area Manager of the Cornwall Probation Office, nor with others in positions of management at the Ministry, prior to Nelson Barque's resignation. Mr. van Diepen ought to have conveyed his observations and knowledge of Mr. Barque's inappropriate conduct to management at the Ministry of Correctional Services. Had this been done in 1976, it is possible that measures would have been taken by Ministry officials to prevent Mr. Barque from further engaging in sexual and other inappropriate contact with young men, clients of the Ministry of Correctional Services.

Nelson Barque Resigns From the Cornwall Probation Office

After completing his investigation, Mr. Sirrs considered the allegations against probation officer Nelson Barque "without question" to be "extremely serious." In his confidential report to Mr. Toffelmire in April 1982, Mr. Sirrs wrote:

Clearly the credibility of Mr. Barque as a Probation Officer as well as that of the Probation and Parole Service in Cornwall is at question. If all or part of these allegations are founded, then Mr. Barque would be unable to continue to function in his capacity as a Probation and Parole Officer.

Mr. Sirrs recommended that the matter be referred to the Inspection and Investigation Branch of the Ministry of Correctional Services for a thorough investigation. He also suggested that the allegations and information gathered in the investigation be presented to Mr. Barque. Mr. Sirrs concluded his report with the following statement:

Should Mr. Barque acknowledge that the allegations are indeed founded, then I would further recommend that he be afforded an opportunity to resign and that should he resign, no further action be initiated by the Ministry. (Emphasis added)

Mr. Sirrs explained at the hearings why he thought the resignation of Mr. Barque was an appropriate response, and why he concluded that it was not necessary for the Ministry to take further action. The Area Manager of the Cornwall Probation Office argued that (1) termination or firing raises serious issues, both legal and under grievance with the employee association; (2) the

process can be difficult and prolonged; (3) he believed that resignations had been the practice of the Ministry in similar situations; and (4) there was “concern for the prestige and the position of Probation in the community.” Mr. Sirrs thought that if the Barque matter became public it would tarnish the image of the Cornwall Probation Office. Mr. Sirrs testified:

I thought this was a very isolated incident and I didn't think that there was any underlying issues ... so that I felt this was a satisfactory way to deal with the matter. (Emphasis added)

Although Mr. Sirrs believed that a formal disciplinary process was more open and transparent, he took the position that resignation was “the most expeditious route to follow in everybody's interest.” His superiors at the Ministry agreed.

Upon receipt of Mr. Sirrs' report, Mr. Toffelmire wrote to Mr. Dickson Taylor, Director of Probation and Parole Services, to inform him of the completion of the preliminary investigation. Mr. Toffelmire stated that Mr. Sirrs had “reached a point beyond which he does not wish to continue the investigation,” and, “It has been most trying on him.” Mr. Toffelmire enclosed Mr. Sirrs' report, making it clear that he “concur[ed] entirely with his recommendations.” In other words, the Regional Administrator (Eastern Region) of Probation and Parole Services seemed to agree that the resignation of Mr. Barque was appropriate.

On May 3, 1982, the Director of Probation and Parole Services informed Mr. Barque by letter that he was suspended with pay from the employment of the Ministry of Correctional Services. Mr. Taylor explained that the suspension was pending the investigation into his “alleged unprofessional and improper supervision of clients.” Both Mr. Sirrs and Mr. Toffelmire were copied on this letter.

On May 5, 1982, Mr. Barque delivered his letter of resignation to Mr. Sirrs:

St-Andrews W., Ontario
May 5th, 1982

Mr. Peter Sirrs,
Ministry of Correctional Services,
502 Pitt Street,
Cornwall, Ontario

By this letter I would like to submit my resignation has [sic] an employee of the Ministry of Correctional Services. The resignation date would be as of May 4th, 1982.

Please forward all monetary dues to my account number 3277, Caisse Populaire de l'Est de Cornwall, and all other documents to Island Rd., St-Andrews, W., Ontario, K0C 2A0.

Thank you.

"Nelson Barque"

Copy: E. Tofflemire [sic]

Mr. Sirrs completed an employee separation and work performance record for Mr. Barque's employment at the Cornwall Probation Office for the period August 1974 to May 1982. The Area Manager rated Nelson Barque's attendance, punctuality, and working relationship with his co-workers and supervisors as "very good" and his quality of work as "good." Mr. Sirrs inscribed the word "resigned" as the reason for Mr. Barque's separation. He stated that he would not rehire this employee. In the space for citing specific reasons, Mr. Sirrs simply wrote, "Mr. Barque submitted his resignation as a consequence of enquiries into his professional conduct and over involvement with clients." No explanation or further details were provided.

When Mr. Sirrs completed this standard Ministry form on May 11, 1982, he was aware of Nelson Barque's sexual relationships with at least two probationers, he knew that Mr. Barque had provided and allowed probationers to use alcohol and/or drugs in breach of probation orders, and he was aware of Mr. Barque's interference with the police. But at the hearings, Mr. Sirrs could provide "no explanation" for the lack of these details on the Ministry form. The former Area Manager of the Cornwall Probation Office agreed that, in retrospect, someone reading this Ministry form would be unaware of the seriousness of the allegations against Mr. Barque.

It was extremely important for the Ministry records to contain the details under which Mr. Barque left his employment from the Cornwall Probation Office. The document completed by Mr. Sirrs clearly did not elaborate on the reasons for Mr. Barque's departure. Specifying sexual acts with probationers, the supply of illicit substances in breach of probation orders, and interference with police might have caused some Ministry officials to question whether the resignation of Mr. Barque was an appropriate response. The Ministry might have initiated contact with probationers who had been subjected to these inappropriate acts by Mr. Barque and offered these victims counselling and other services. And perhaps it would have prompted some Ministry officials to implement changes in the supervision of probation and parole officers in the

Cornwall Probation Office after Mr. Barque's departure. This would have helped to ensure that more young men were not subjected to sexual and other inappropriate acts by their probation officers, who were in positions of trust and authority over these probationers.

The McMaster Report: Inspection and Investigation Branch Decides No Further Action Is Necessary After Barque Resignation

Mr. Teggart, Director of the Inspection and Investigation Branch of the Ministry of Correctional Services, asked Inspectors Clair McMaster and Robert Porter to investigate the alleged unprofessional conduct of Mr. Barque, probation and parole officer at the Cornwall Probation Office. The request for this investigation was initiated by Mr. Taylor, Director of Probation and Parole Services.

Inspectors McMaster and Porter were briefed in Cornwall by Mr. Sirrs on April 29, 1982. The two inspectors proceeded to the CPS and met with Staff Sergeant Allaire and Sergeants Laroche and Masson. The three police officers confirmed that they had heard rumours regarding Mr. Barque's relationship with probationers and, in particular, Robert Sheets. In addition, they discussed Mr. Barque's attempts to interfere with the police on behalf of Mr. Sheets. The Ministry inspectors also interviewed the janitorial staff from the former location of the probation office.

Inspectors McMaster and Porter returned to Cornwall on May 4, 1982, and interviewed C-44, C-44's father, and Robert Sheets. C-44's father stated that both he and his wife had been concerned for a long time about Mr. Barque's supervision of their son. C-44's father said that Mr. Barque had supplied his son with liquor and knew that his son often smoked "pot." Despite knowledge of this conduct, Mr. Barque did not breach C-44's probation. The Ministry inspectors also learned that C-44 had disclosed to his mother in approximately April 1982 that he was sexually involved with Mr. Barque.

On May 6, 1982, Inspector McMaster took a sworn statement from Mr. Barque in respect of the allegations of misconduct. Forty-two-year-old Nelson Barque admitted that he had engaged in sexual relations with two probationers for whom he was responsible: Robert Sheets and C-44. Mr. Barque acknowledged that he had instigated the sexual relationships with the two probationers, which had taken place over a one-year period. Mr. Barque also admitted that he gave C-44 and Robert Sheets alcohol in violation of their respective probation orders. When asked by Inspector McMaster why he had allowed them to consume liquor, Mr. Barque responded, "Because they asked me for it and I had to comply being involved with them in a homosexual relationship." As Inspector McMaster stated in his report, Mr. Barque was "intimating that it was a form of blackmail." Below

is an excerpt of the interview with Inspector McMaster in which Mr. Barque admits he engaged in sexual relations and provided liquor to probationers under his supervision:

Q: You are aware that allegations have been made in that you have had homosexual relations with probationers, that you have provided them with alcoholic beverages and that at least on one occasion did interfere with police in an investigation. Do you wish to respond to these allegations?

A: Yes.

Q: *Do you admit that you have had sexual relations with any person on probation on your case load?*

A: Yes.

Q: *Who?*

A: *[C-44] and Robert Sheets.*

Q: *How long has this been happening?*

A: *One year.*

Q: *Who instigated these relationships?*

A: *I did.*

Q: *Did you provide these probationers with alcoholic beverages?*

A: Yes.

(Emphasis added)

Mr. Barque was also asked about his attempts to obstruct the police on behalf of his probationers. His response was that he “didn’t feel [he] was interfering” but rather “was trying to get the person—Robert Sheets—away from the situation before he got into trouble.”

Inspector McMaster interviewed C-44, who stated that Mr. Barque had been his probation officer since 1980. C-44 explained that Mr. Barque had supplied him with alcohol “quite often” and never took any steps to breach his probation because Mr. Barque was “afraid” of him. C-44 confirmed that he had been involved in a sexual relationship with Mr. Barque for about a year and that the last time they had been together was on March 31, 1982, at the probation office on 502 Pitt Street.

In his May 13, 1982, report to Mr. Teggart, Inspector McMaster concluded that Mr. Barque was “inappropriately involved with Robert Sheets and [C-44]” and that he had “effectively compromised his authority and position as a Probation Officer.” Despite these conclusions, Inspector McMaster recommended that no further action be taken by the Ministry of Correctional Services. The investigation

report ends with the following statement: “Since Mr. Barque has submitted his resignation effective May 4th, 1982, no further action by this Ministry is deemed necessary.”

The same conclusion was reached by Mr. Teggart, Director of the Inspection and Investigation Branch. In his confidential report of May 31, 1982, to the Deputy Minister, Mr. A. Campbell, Mr. Teggart states that although the investigation established that Mr. Barque did “supply alcoholic beverages” and was “homosexually involved” with two probationers under his supervision, no further action was required because the probation officer had resigned:

Mr. Barque submitted his resignation prior to the conclusion of this investigation with an effective date of May 4th, 1982. This concludes our investigation and *no further action is necessary by this branch.*
(Emphasis added)

When Ministry Special Investigator Mr. Paul Downing conducted an internal review in 2000, he did not find evidence that a full and thorough investigation of Mr. Barque’s activities had been undertaken by the Ministry. In my view, the Ministry of Correctional Services should have conducted a comprehensive investigation to determine the full extent of Mr. Barque’s inappropriate behaviour and to identify other probationers, such as Albert Roy, who may also have been sexually abused by Mr. Barque.

As I discuss further in Chapter 11, “Institutional Response of the Ministry of the Attorney General,” Inspector McMaster wrote a letter and spoke to Crown Attorney Don Johnson on June 14, 1982, concerning Nelson Barque. Inspector McMaster sent his report and asked the Crown attorney whether criminal charges would be laid against the Cornwall probation officer. In correspondence on June 22, 1982, Mr. Johnson replied that criminal charges were not warranted for the following reasons. First, he stated that Mr. Barque had resigned from the Ministry of Correctional Services when confronted with the allegations. Second, the Crown attorney noted that one of the “homosexual relationships” involved an individual who was twenty-one years old and that as a result, a criminal prosecution would not be successful. And third, although Mr. Barque had admitted to engaging with Mr. Sheets in a “homosexual relationship,” Mr. Sheets had denied it. It was Mr. Johnson’s view that criminal charges against Mr. Barque would not succeed in these circumstances.

Mr. Sirrs and the Ministry of Correctional Services did not adequately supervise probation officer Nelson Barque. Moreover, Mr. Sirrs and the Ministry failed to implement changes in the Cornwall office regarding the supervision of probation officers after Mr. Barque’s departure for sexual improprieties with Ministry

clients under his supervision. It is my view that applying the standards of that time, the decision to allow Mr. Barque to tender his resignation and the failure to provide details on Ministry work performance and employee separation forms of Mr. Barque's inappropriate conduct with probationers demonstrated very poor judgment on the part of Ministry officials. Ms Newman stated that had she been confronted with the Barque situation, she would have terminated the probation officer's employment at the Ministry. As the Deputy Minister testified, "[I]n that particular situation ... if I was making the disciplinary decision, I would say I would terminate the individual." Mr. Sirrs confirmed at the hearings that no steps were taken to assist the victims of Mr. Barque after their probation officer resigned. The probationers were likely to have required and might have been receptive to counselling and other professional services as a result of Mr. Barque's sexual behaviour and other inappropriate conduct. Failure to pursue the more formal disciplinary process at the Ministry and to furnish details on Ministry forms of the reasons for Mr. Barque's departure clearly had the effect of suppressing information regarding Mr. Barque's egregious and inappropriate conduct.

It is my recommendation that the Ministry of Community Safety and Correctional Services institute measures to ensure that detailed information on the reasons for an employee's departure from the Ministry, including details of inappropriate and sexual conduct, are provided on the employee separation and work performance records.

Failure to Assess Whether Other Probationers Were Subjected to Inappropriate Acts by the Cornwall Probation Officer

After Mr. Barque's resignation, no action was taken by the Ministry of Correctional Services to try to determine whether other probationers in Cornwall had been subjected to inappropriate conduct by their probation officers. Neither Mr. Sirrs, Area Manager of the Cornwall Probation Office, nor Inspectors McMaster and Porter or other Ministry officials took measures to ensure that this assessment was done.

After Mr. Barque resigned from the Cornwall office, Mr. Sirrs did not convene a meeting or discuss with his staff the reason for Mr. Barque's departure. Nor did he ask his staff whether they knew or had concerns about inappropriate behaviour by Mr. Barque with probationers.

Mr. Sirrs testified that he "didn't really tell" his staff "anything" about the reasons for Mr. Barque's departure from the probation office. At the hearings, he said: "I didn't feel that it was my position to lay out the circumstances of Mr. Barque's resignation ... I concluded they would probably find out through the grapevine."

Mr. van Diepen confirmed that no meeting was convened by Mr. Sirrs or other Ministry officials after Mr. Barque's resignation to inform probation officers

and staff at the Cornwall Probation Office of the reason and circumstances surrounding his departure. Mr. van Diepen was not told that Mr. Barque had admitted to engaging in a sexual relationship with a probationer: “[T]he Ministry never told us what happened.”

Mr. Sirrs did not even discuss the reasons for Mr. Barque’s resignation with Carole Cardinal, the probation officer who assumed responsibility for Nelson Barque’s caseload. In early May 1982, after Mr. Barque had resigned, Ms Cardinal was offered a contract and then a permanent position at the Cornwall Probation Office. Mr. Sirrs simply advised Ms Cardinal to report to him anything out of the ordinary.

It was not until several months later that Ms Cardinal learned from her colleagues at the probation office the circumstances surrounding Nelson Barque’s resignation. Ms Cardinal found out that Mr. Barque had been asked to resign from the Cornwall Probation Office for having a sexual relationship with a client. This was approximately four or five months after she assumed responsibility for Mr. Barque’s probation cases.

Mr. van Diepen testified that neither he nor, to his knowledge, other staff at the Cornwall office were asked to examine Nelson Barque’s files after his resignation. In particular, neither Mr. van Diepen nor his colleagues were asked to conduct a review to determine whether other probationers had had a sexual relationship with Mr. Barque. Nor did Ministry officials such as the Regional Administrator visit the Cornwall office to conduct a case review of Mr. Barque’s or other probation files.

Carole Cardinal agreed that it would have been prudent to conduct an investigation of all Mr. Barque’s files to ensure that other probationers were not subject to inappropriate behaviour. As I discuss later in this chapter, beginning in the 1990s over thirty former Ministry clients made disclosures of sexual misconduct to the Cornwall Probation Office. Some of these allegations involved Nelson Barque, and a few of these disclosures were made to Ms Cardinal.

Mr. Sirrs was asked at the hearings to explain (1) his failure to advise his staff of circumstances surrounding Mr. Barque’s departure from the Cornwall Probation Office; and (2) his failure to seek additional information about Mr. Barque’s behaviour with his probationers. Mr. Sirrs replied that there was a Ministry policy that if staff “knew of something that was going on in the office that was inappropriate, they were required to advise their management, either directly to the manager or, if that wasn’t satisfactory, to a more senior manager.” Mr. Sirrs simply relied on this policy and did not take proactive measures to seek out this important information. This was in spite of the fact that the Area Manager thought that other staff in the Cornwall office might have knowledge of Mr. Barque’s inappropriate behaviour with his probationers.

Mr. Sirrs acknowledged that “in retrospect,” it “probably ... would have been a good idea” to issue a memo or meet with his staff to remind them that they should report concerns or inappropriate conduct to him. This might have revealed information of which he and other Ministry officials were not aware, namely that other probationers had been victims of sexual and other inappropriate acts. Moreover, discussing these issues and concerns with his staff could have served as a deterrent to other probation officers who were contemplating engaging in such behaviour with Ministry clients. It could also have halted the inappropriate conduct of staff in the Cornwall office. Mr. Sirrs failed to stress Ministry policies and the ethical conduct expected of probation officers and staff.

As I discuss in this chapter, some years later probationers disclosed that another probation officer in the Cornwall office, Ken Seguin, had engaged in sexual acts and other inappropriate conduct with them. And significantly, other probationers of Mr. Barque revealed that they, too, had participated in sexual acts with him and with Mr. Seguin.

Mr. Sirrs did not conduct a historical review of Mr. Barque’s files to determine whether probationers other than C-44 and Robert Sheets had been involved in sexual relations with him, had been supplied with alcohol and other illicit substances, or had been involved in other inappropriate behaviour with this probation officer. Nor did anyone from the Ministry, stated Mr. Sirrs, suggest to him that such follow-up be undertaken. Mr. Sirrs agreed that in hindsight, it “certainly wouldn’t have done any harm” to examine the files of Mr. Barque to assess whether other probationers in the past had been subjected to inappropriate conduct. If this had been done, perhaps names would have emerged such as Albert Roy, a probationer abused by Mr. Barque. Both former Deputy Minister Morris Zbar and Deputy Minister Newman agreed that examining the files was important. Mr. Roy Hawkins, the Regional Manager who replaced Mr. Toffelmire, also testified that it was “troubling” that Mr. Barque’s clients weren’t followed up by the Ministry. As I discuss later in this Report, Mr. Barque pleaded guilty to indecent assault of Albert Roy and was sentenced in 1995 to four months custody and eighteen months probation. And significantly, a few weeks after he was interviewed by the Ontario Provincial Police in June 1998 for the sexual assault of Robert Sheets and another probationer, C-45, Nelson Barque committed suicide.¹⁸

Mr. Sirrs was asked at the Inquiry why, in his preliminary investigation, he did not contact other probationers supervised by Mr. Barque. His response was that it did not occur to him at that time. And, he said, probationers tend to “generate unreliable information”:

18. Nelson Barque died on June 28, 1998.

... [G]enerally they can be less than factual about things, and so I would not have had a lot of regard for any complaint that they might have made, not having come forward themselves to initiate the complaint.

It is surprising and of serious concern to me that the Area Manager of a probation office decided not to contact possible victims of abuse by Mr. Barque because he believed probationers to be untrustworthy individuals. Mr. Hawkins, the Regional Manager, agreed that this was clearly not an appropriate management response.

It is my recommendation that the Ministry of Community Safety and Correctional Services develop a protocol to ensure that file reviews are conducted in circumstances in which there are allegations of sexual improprieties by Ministry employees of clients under their supervision. The Area Manager should examine the case notes of other clients under the employee's supervision and conduct interviews with clients.

This was endorsed by Deputy Minister Newman when she gave her evidence at the Inquiry. Ms Newman testified that the protocol should also mandate an examination of case files when Ministry employees depart suddenly, or if there is a suspicious death. She also stated that a formal investigation should be conducted by the Ministry in circumstances in which suspicious patterns are discovered in the review of the case files. I agree.

Mr. Sirrs stated that after Mr. Barque resigned, he did not institute any changes in the office in terms of managerial oversight to eliminate the risk of something similar recurring. Mr. Sirrs considered whether perhaps other probation officers in the Cornwall office, such as Ken Seguin, could be involved in similar behaviour, but he dismissed this thought as without foundation.

Shortly after Mr. Sirrs completed his investigative report, there was a meeting of regional managers. Bill Groten from Kingston, Gerry Kiessling from Ottawa Centre, and Lorraine Braithwaite from Ottawa West were among those in attendance at the meeting. Mr. Toffelmire, Regional Administrator (Eastern Region), was also present. Mr. Sirrs stated that at the meeting he raised his concern about sexual contact between probation officers and probationers. But Mr. Sirrs had no recollection of either identifying probation officers about whom he was concerned or discussing preventive measures that could be implemented in the probation office to ensure that the behaviour engaged in by Mr. Barque with Ministry clients did not recur.

In my view, Area Manager Peter Sirrs and the Ministry of Correctional Services should have implemented changes in the supervision of probation and parole officers after Mr. Barque's departure from the Cornwall Probation Office for his inappropriate behaviour with probationers.

A short time later, in 1983, Mr. Roy Hawkins replaced Mr. Toffelmire as Regional Manager (Eastern Region). Mr. Hawkins met with Area Manager Peter Sirrs to obtain a briefing on the Cornwall Probation Office. But Mr. Sirrs did not convey any information to the new Regional Manager about the situation with Mr. Barque or his concern that other probation officers could be involved in similar inappropriate behaviour with Ministry clients. Mr. Sirrs testified that he could not recall whether he briefed Mr. Hawkins on this issue, but agreed that it was “probably” important to advise the new Regional Manager about these issues that had confronted the Cornwall Probation Office in the past year. Mr. Hawkins testified that even in 1993, when he left the Eastern Region for a position with the Ministry in London, Ontario, he was not aware of the Barque improprieties. Deputy Minister Newman agreed that this issue deserves serious attention by the Ministry:

[I] think you raise a very legitimate concern in relation to information management and so that is on my radar. That has come to my attention through looking at this and at the gaps that I think you've pointed out quite aptly, that we need to consider how better to capture institutional memory as people transition from positions and we have a long history that goes back a number of decades. I think that's very challenging.

We don't have a work environment where people spend their entire careers in a single position so we don't have that continuity. So I've certainly begun to think about how we can better ensure the transmission of information, and particularly at the area manager and regional manager level, who have direct responsibility for managing our operations; that they need some way of ensuring that that institutional memory of events is captured and that it can be easily retrieved and accessed. And I think that's very challenging but it's certainly something that I'm committed to undertaking to try to do better. (Emphasis added)

In my view, it is essential that such information be communicated to Ministry officials who are assuming new positions in the Ministry of Community Safety and Correctional Services. It is my recommendation that the Ministry institute policies and procedures to ensure the transfer of such critical information to incoming area managers and to other officials assuming supervisory positions at the Ministry. A system should be implemented to ensure that information on incidents is collected systematically. This information should be easily retrievable by Ministry officials at all levels.

Nelson Barque's Application to Work With Children After His Resignation From Probation: Peter Sirrs Is Contacted for a Reference

Équipe Psycho-sociale is an organization in Cornwall that provides programs for children who live in the United Counties of Stormont, Dundas & Glengarry. The team, composed of psychologists, social workers, and psychiatric consultants, offers specialized services for children from infancy to eighteen years old who have mental health issues. Some of the programs include day clinical services, intervention in school settings, and programs for abused children.

Pierre Landry, executive director of Équipe Psycho-sociale in Cornwall, placed an advertisement in the local newspapers in 1982 to search for additional staff. In 1982, there was an expansion of services, and Mr. Landry required a social worker on his team at Équipe Psycho-sociale. Nelson Barque, who had left the Cornwall Probation Office a few months earlier, responded to the advertisement. The curriculum vitae sent by Mr. Barque to Mr. Landry in July 1982 stated that Mr. Barque had a Master of Social Work degree from Carleton University, that he was fluently bilingual in French and English, that he had worked as a social worker for the City of Cornwall, and that he was a substitute teacher at La Citadelle Secondary School. It also mentioned that Mr. Barque was involved in a number of community organizations and boards. The curriculum vitae stated that from August 1974 to May 4, 1982, he was employed by the Ministry of Correctional Services as a probation officer in Cornwall. Mr. Barque listed the reason for leaving this position as conflict with Ministry rules: “[J]’ai quitté dû à un conflit face aux règlements du Ministère.” Mr. Peter Sirrs, 502 Pitt Street, Cornwall, was listed as his reference.

Mr. Landry received ten to fifteen applications for the position. About three or four candidates were selected for interviews, one of whom was Mr. Barque. Because of his professional background, his experience, and his involvement in community activities, Mr. Barque was an attractive candidate. At that time, it was difficult to find individuals with professional backgrounds in the Cornwall area. Mr. Landry said:

... [C]hose certaine, c’est son expérience qu’il avait, ses qualifications, d’autre chose aussi, c’est y semblait être impliqué au niveau communautaire, y semblait connaître, définitivement, la communauté de Cornwall et les environs.

C’est peut-être, disons, ce qu’y a joué le plus dans la sélection de Monsieur Barque. Parce que, à ce moment-là, c’était très difficile aussi de trouver les gens de Cornwall avec un background professionnel. Les

gens venaient de l'extérieur la plupart. Alors, si je regarde ses activités, il était très impliqué au niveau de la communauté de Cornwall.

Mr. Landry interviewed Mr. Barque. The executive director of Équipe Psycho-sociale described the work expected and the functioning of the team, as well as salary and vacation. He also discussed a possible start date in the event that Mr. Barque was selected for the position.

At the interview, Mr. Landry asked Mr. Barque why he had left his employment at the Cornwall Probation Office. Mr. Barque responded that there was a political conflict, a new administration, a new direction with his supervisor. Mr. Landry did not ask Mr. Barque to elaborate on this conflict at the probation office or the reason for his departure. Rather, the executive director decided to contact Mr. Barque's references and to acquire more information about the reasons the probation officer had resigned from his position at the Ministry.

At the interview, Mr. Barque offered a second reference, Father Dubé, a priest at Christ-Roi Church. Mr. Barque was a member of the parish committee at this church. After the interview, Mr. Landry contacted Father Dubé, who highly recommended Mr. Barque for the position.

Mr. Landry also called the Area Manager of the Cornwall Probation Office, Peter Sirrs. Mr. Landry explained that he was the executive director of Équipe Psycho-sociale, which provided mental health services, and that Mr. Barque had submitted an application for the position of social worker. Mr. Landry could not recall whether he explicitly told Mr. Sirrs in the August 1982 call that the Psycho-sociale team worked with children or that Mr. Barque would be providing services directly to children. But Mr. Landry stressed in his evidence that the Psycho-sociale team was well known in Cornwall in 1982. The local newspapers as well as the Ottawa press reported on the work of this mental health agency. Government ministers had visited Cornwall in 1980 and 1982 in connection with the work and new premises of Équipe Psycho-sociale.

Mr. Sirrs testified that from this conversation with Mr. Landry, he was aware that Mr. Barque would be working with clients but construed this as "working directly with the school board." Mr. Sirrs claimed he could not recall whether Mr. Landry had explained that the advertisement was for a social worker position. Nor could Mr. Sirrs remember whether the executive director of Équipe Psycho-sociale mentioned that the agency provided services to children with mental health issues.

In this telephone call with Mr. Sirrs, Mr. Landry asked the Area Manager of the probation office for a reference for Mr. Barque. Peter Sirrs responded by asking Mr. Landry to send him a letter specifically requesting a reference for

his former employee. Mr. Landry testified that at no time during this telephone conversation did Mr. Sirrs offer any details about Mr. Barque. Nor did he suggest or caution Mr. Landry that he should not hire his former employee.

Mr. Sirrs did not ask Mr. Landry any questions in this telephone call about the work of the agency. But Mr. Sirrs claimed that he “advised” Pierre Landry that he “would not employ Mr. Barque.” Mr. Sirrs stated: “I will say one more thing with regard to the phone call. I told him very clearly at the end of our phone conversation, I said, ‘I would not hire Mr. Barque.’”

Not only was this disputed by Mr. Landry, but when Ministry Special Investigator Paul Downing conducted his investigation and spoke to Mr. Sirrs about the telephone call, Mr. Sirrs failed to inform him that he had cautioned the executive director of Équipe Psycho-sociale not to hire Mr. Barque. When Mr. Downing interviewed Mr. Sirrs in 2000, Mr. Sirrs initially said he could not recall a telephone call with Pierre Landry regarding a job reference for Nelson Barque. Mr. Downing testified that it was only “later during the conversation” that Mr. Sirrs “acknowledged that there had been a telephone contact” but claimed “he had not released any information and had told Pierre that he needed the release form prior to providing any information regarding Nelson’s employment.”

It was evident to Mr. Downing that a difference of opinion existed between Mr. Landry and Mr. Sirrs regarding (1) the existence of the telephone call initially; and (2) the contents of the call. Paul Downing considered Mr. Landry’s version of events to be credible:

... [T]here appeared to be certainly a difference of opinion based on my conversation with Pierre [Landry] and Peter [Sirrs]. Pierre was very clear to me during my telephone conversation that he had in fact had some discussion with regards to the employment that Nelson [Barque] would become involved in and that that was the purpose of his telephone call, was to assure that Nelson would be appropriate for that nature of work. Obviously, from my discussion with Peter, he’s taking the position that that did not take place.

...

... I recall the conversations very clearly because it was ... for me as an investigator, it was a significant issue with a reference letter on file, the investigation report that caused Nelson to resign and the potential future employment that this former employee was to become involved in, I had no reason, based on my conversation with Pierre—it was quick, it was spontaneous ...

he seemed to be credible—the reluctance of Peter caused me concern.
(Emphasis added)

After carefully assessing the documents and testimony of the witnesses, I have come to the conclusion that Mr. Sirrs, Area Manager of the Cornwall Probation Office, did not advise Mr. Landry, executive director of Équipe Psycho-sociale, that he should not hire Nelson Barque in the telephone call.

On August 12, 1982, Mr. Landry wrote the requested letter to Mr. Sirrs asking the Area Manager for a reference for Nelson Barque. The letter reads:

Dear Mr. Sirrs:

Following our telephone conversation of this date, I would appreciate receiving any recommendations that you can give me concerning Mr. Nelson A. Barque, who has applied for the position of Social Work with our organization.

I would also like to take this opportunity to thank you for your cooperation in this matter.

Yours sincerely,

Pierre Landry
Executive Director

The letter specifically states that the position is for a social worker. Of significance is that it is clearly inscribed on the letterhead that the agency provides services to children and adolescents:

ÉQUIPE PSYCHO-SOCIALE POUR ENFANTS ET ADOLESCENTS
FRANCOPHONES DE STORMONT, DUNDAS & GLENGARRY

Mr. Sirrs took the position that he did not receive the August 12, 1982, letter from Mr. Landry. As he said at the hearings, “I am quite clear that I didn’t receive the letter.”

Despite Mr. Sirrs’ contention that he did not receive Mr. Landry’s letter of August 12, Mr. Sirrs wrote to the executive director on August 23, 1982, providing an “employment reference” for Nelson Barque. The Area Manager of the Cornwall Probation Office wrote:

Dear Mr. Landry:

Re: Employment Reference—Nelson A. Barque

Mr. Barque commenced his employment with the Ministry of Correctional Services in Cornwall as a Probation and Parole Officer I on August 19, 1974. He completed the probationary period satisfactorily and was confirmed to the classified staff (permanent) one year later.

On June 1, 1978 Mr. Barque was reclassified to Probation and Parole Officer II, following his successful completion of the in-service Professional Development Program, and remained with the Ministry in this capacity until his resignation effective May 4, 1982.

Yours truly,

Peter H. Sirrs,
Area Manager

Mr. Sirrs simply provided information about the dates of Mr. Barque's employment in Cornwall with the Ministry of Correctional Services, and his position as a probation and parole officer. Mr. Sirrs does not mention the reason for Mr. Barque's resignation nor suggest any inappropriate behaviour on the part of the probation officer. Peter Sirrs acknowledged that "it's just tombstone data." When Mr. Sirrs was asked by counsel whether he thought it was important to inform a prospective employer about the circumstances surrounding Mr. Barque's departure from the Cornwall Probation Office, his response was: "I'm bound by privacy regulations and I'm responsible not to release information without the individual's consent." But Mr. Sirrs did not ask Mr. Barque whether he could release this information. Mr. Sirrs maintained, "[T]hat wasn't my responsibility."

Mr. Downing decided to contact Pierre Landry in October 2000 in his investigation of Mr. Barque's departure from the Ministry in 1982 and his subsequent employment with Équipe Psycho-sociale. It was Mr. Downing's understanding that "Mr. Barque left the employment, resigned but there was cause to dismiss him." The Ministry Special Investigator was "curious as to the reference that had been provided to Pierre by Mr. Sirrs surrounding Nelson Barque's employment with the Ministry."

It is significant that when Mr. Downing contacted Peter Sirrs in 2000, Mr. Sirrs initially claimed that he did not provide an employment reference for Nelson

Barque. When Mr. Downing told Mr. Sirrs that he in fact had a reference letter in his possession, Mr. Sirrs' response was that someone "must have forged" his signature. Mr. Downing testified:

I then talked to him about a letter I had—a letter of reference, and he stated that he had not prepared any such letter of any nature and I said to him I had one in my hands and it appeared to be his signature. He initially responded that, "Then somebody must have forged it because I didn't do it."

Mr. Sirrs was "reluctant to talk" to Mr. Downing and "asked for reassurance that a lawyer would be provided and any expenses if he talked to me any further."

It is clear from the evidence that Peter Sirrs, Area Manager of the Cornwall Probation Office, provided a reference for Nelson Barque to Pierre Landry of Équipe Psycho-sociale. Mr. Sirrs knew that Mr. Barque had applied for the position of social worker and would be working with schools in the Cornwall area. Mr. Sirrs was also aware that Mr. Barque would be interacting with special needs children. This was confirmed in the August 12, 1982, letter from Mr. Landry, which I find Mr. Sirrs received. The letterhead explicitly states that the agency provides services to children and adolescents with mental health issues. But Mr. Sirrs did not, either in his telephone conversation or in his written correspondence with Mr. Landry, disclose that Mr. Barque had left the probation office because of allegations of sexual improprieties with probation clients under his care and supervision at the Ministry of Correctional Services. The executive director of Équipe Psycho-sociale did not become aware of this information for four years, during which time Mr. Barque worked directly with children at this agency.

Mr. Sirrs should have told Mr. Landry that he had concerns regarding Mr. Barque for the position at Équipe Psycho-sociale. He should have conveyed to the executive director of the agency that Mr. Barque, while in a position of trust, had had sexual relationships with probationers under his charge. Moreover, the Ministry of Correctional Services should have had policies in place that would have precluded Area Manager Peter Sirrs from providing a reference of this kind for an employee such as Mr. Barque after his resignation from the Ministry for sexual improprieties with probationers under his supervision.

Nelson Barque's Employment at and Resignation From Équipe Psycho-sociale

Mr. Barque worked for Équipe Psycho-sociale as a social worker from 1982 to 1986. He interacted with children at two elementary schools in Cornwall: École

Nativité and École St. Francis de Sales. Mr. Barque met privately with children at these two schools. As explained by Mr. Landry, École Nativité was located in a disadvantaged area with an at-risk population and Mr. Barque met with boys and girls who had behavioural problems. He often met with these children alone.

In May–June 1986, Mr. Landry received two or three anonymous telephone calls asking him to seek information about the reason for Mr. Barque's resignation from the Cornwall Probation Office. In one of the contacts, the anonymous caller stated that Mr. Barque had ended his career as a probation officer because he had sexually abused clients. As the executive director of Équipe Psycho-sociale said at the hearings:

... [J]'ai eu un autre appel me disant à ce moment-là que Nelson, la raison qu'y avait été parti de l'officier de probation, c'est que apparemment il y aurait eu des abus sexuels et que c'était très sérieux ... Sur des clients qu'il voyait comme officier de probation.

Mr. Landry was also told in these calls that Mr. Barque socialized with adolescents at Cornwall Square, a shopping mall on Water Street.

Mr. Landry decided to go to Cornwall Square one evening. On this visit, he saw Mr. Barque on two or three occasions socializing with boys who ranged in age from sixteen to eighteen. Mr. Landry and Mr. Barque saw each other but did not exchange words.

Within the next day or so, Mr. Landry confronted Mr. Barque. The executive director told the former probation officer that he had received anonymous calls in which serious allegations had been made against Mr. Barque, namely that he had made sexual advances or had engaged in inappropriate touching. Mr. Landry told Mr. Barque that he must leave his employment at the agency if this information was accurate. Later that day, Mr. Barque tendered his resignation. The July 11, 1986, letter states in part:

Cher monsieur Landry,

Par la présente, veuillez [sic] accepter ma demission comme travailleur social à l'Équipe Psycho-sociale pour enfants et adolescents franco-phone de S.D. & G.

Je quitterais mon poste, effectif le 18 août 1986. Je prendrais mes vacances pour l'année 1986 à partir du 21 juillet 1986 au 15 août 1986 inclusivement.

Mr. Barque asked Mr. Landry for time to inform his wife that he was no longer employed at Équipe Psycho-sociale.

In the four years in which Mr. Barque was employed at Équipe Psycho-sociale, 1982 to 1986, no information had been conveyed to Mr. Landry that Mr. Barque had engaged in sexual conduct with young people. It was only in 1986, when Mr. Landry received the anonymous calls, that the executive director of Équipe Psycho-sociale learned about these allegations. As Mr. Landry said, it was a well-guarded secret:

... [C]hose certaine, c'est que de '82 à '86, j'ai jamais entendu parler de rien. Et croyez-moi j'étais impliqué moi aussi dans la communauté et jamais personne m'a parlé de rien. Alors, *ça me semblait être un secret bien gardé*. Je sais pas, mais chose certaine, personne m'a parlé de rien. (Emphasis added)

Mr. Landry subsequently met with his staff at Équipe Psycho-sociale to inform them that Mr. Barque had resigned. He told his team that there were allegations from anonymous sources regarding acts of misconduct committed by Mr. Barque while he was a probation officer. The executive director did not provide details.

Mr. Landry did not discuss this issue with school officials or family members at the two elementary schools at which Mr. Barque had interacted with young children as a social worker.

Some time later, Mr. Landry received a call from an individual who asked for an employment reference for Mr. Barque. Mr. Landry made it clear to that person that he would not re-hire Nelson Barque. He did not provide any further details.

Mr. Landry did not know that after he had resigned from Équipe Psycho-sociale, Mr. Barque taught as a supply teacher in a local high school. Nelson Barque again had contact with youths.

It was several years after Mr. Barque's resignation from Équipe Psycho-sociale that Pierre Landry learned through the media that Mr. Barque had been found guilty of sexual acts committed at the time he was a probation officer. As mentioned, Mr. Barque was sentenced in Cornwall on August 18, 1995, to four months incarceration and eighteen months probation for indecently assaulting Albert Roy, a former probationer, contrary to the *Criminal Code*. This is discussed in fuller detail in this chapter.

Carole Cardinal's Contact With Nelson Barque on the Child Abuse Prevention Council

Carole Cardinal was a member of the Child Abuse Prevention Council in Cornwall on behalf of the Probation Office. The Child Abuse Prevention Council was established in 1984–1985 to bring together agencies to develop a protocol on

child abuse issues in the community. Ms Cardinal stated that the Child Abuse Prevention Council had a “high profile” in the local media.

Mr. Barque attended a meeting of the Child Abuse Prevention Council and identified himself as a representative of Équipe Psycho-sociale. Ms Cardinal testified that until that time, she had not been aware that Mr. Barque was employed at Équipe Psycho-sociale and was “surprised” the former probation officer attended the meeting. She was familiar with this agency and knew that Équipe Psycho-sociale provided services to francophone children with behavioural problems.

At the meeting, Mr. Barque volunteered to distribute pamphlets about child abuse to the public at shopping malls. Ms Cardinal took “quite an exception to that” and “really didn’t want him to be a representative of our council.” After the meeting, she decided to express her concerns to a member of the Child Abuse Prevention Council, Crown Attorney Don Johnson, who was also familiar with the circumstances under which Mr. Barque had resigned from the Cornwall Probation Office. Ms Cardinal told the Crown attorney that Mr. Barque should not participate at these meetings. She also raised her apprehensions with Bruce McPhee, a defence lawyer in the Alexandria area who was a school trustee at the time. According to Ms Cardinal, he agreed with her concern regarding Mr. Barque’s participation at the Child Abuse Prevention Council.

Mr. Barque did not appear at subsequent meetings of the Child Abuse Prevention Council. Ms Cardinal concluded that “somebody must have spoken to him and asked him not to return.”

After this encounter with Mr. Barque, and despite the knowledge she had acquired regarding his current employment, Ms Cardinal did not contact the executive director or other staff at Équipe Psycho-sociale. When asked by Commission Counsel whether other people contacted Équipe Psycho-sociale to discuss Mr. Barque, Ms Cardinal’s response was “not that I’m aware of.” As mentioned, Mr. Barque remained a social worker at Équipe Psycho-sociale until 1986, at which time the executive director received anonymous calls that suggested that Mr. Barque’s career at the probation office in Cornwall had ended because he had sexually abused clients.

Probation Staff Aware of Nelson Barque’s Interaction With Children at Subsequent Places of Employment

Jos van Diepen, a probation officer at the Cornwall office, knew that Nelson Barque had been hired at Équipe Psycho-sociale. He was also aware that Équipe Psycho-sociale was a francophone agency that provided services to children with behavioural and psychological problems.

Mr. van Diepen testified that other staff at the Cornwall Probation Office also knew that Mr. Barque was working at Équipe Psycho-sociale after his employment

as a probation officer. In the words of Mr. van Diepen, “[W]e were rather shocked” and “thought it was inappropriate.” This was because Mr. Barque was in a position of trust with these children. Mr. van Diepen claimed that he spoke to Carole Cardinal, who undertook to speak to the Board of Équipe Psycho-sociale. Mr. van Diepen claims that he also spoke to Area Manager Peter Sirrs, about this issue.

Mr. van Diepen stated that he and others at the Cornwall Probation Office also had concerns when Mr. Barque worked as a supply teacher at the same French school board after he left his job at Équipe Psycho-sociale.

Nelson Barque secured a supply teaching contract with Conseil des Ecoles Séparées de Stormont, Dundas et Glengarry in 1992. He left one year later. From 1993 to 1994, he had part-time employment as an assistant administrator with L’Arche la Caravane, a residential facility for disabled adults. When Mr. van Diepen was asked at the hearings how he became aware of Mr. Barque’s different jobs, his response was, “It’s Cornwall. It’s a very small community.”

Mr. van Diepen told Mr. Downing in his interview on September 28, 2000, that after Mr. Barque’s resignation from the Ministry of Correctional Services, he heard that Nelson Barque was “involved in a ‘lovers triangle’ with one and possibly two clients.” Mr. van Diepen was also aware in the 1980s and 1990s that men were reputed to be engaging in sexual acts with young persons at the Cornwall Square mall. He also knew that “Nelson would hang out there” after his employment as a probation officer at the Ministry. Knowledge by staff of inappropriate conduct of probation officers at the Cornwall Probation Office is further discussed in the following sections of this chapter.

Tension Between the Area Manager of the Cornwall Probation and Parole Office and His Staff

Emile Robert became the Area Manager of the Cornwall Probation and Parole Office in 1985. His predecessors were Leo White, who was the Area Manager for a short period, and Peter Sirrs, who was in that position from 1981 to 1984. Mr. Robert became a probation officer at the Ministry of Correctional Services in 1978. He worked in Kapuskasing, in northern Ontario, and then L’Orignal.

There was a competition for the position of Area Manager of the Cornwall Probation Office in 1985, and Ken Seguin, Jos van Diepen, and Emile Robert were applicants. Mr. Seguin decided to withdraw his name from the competition. At the hearings, his colleagues were unable to give a definitive reason for Mr. Seguin’s decision not to pursue the Area Manager position.

Mr. van Diepen had previously submitted his name in a number of competitions for Area Manager in different locations in Ontario. This was Mr. van Diepen’s second application for the Cornwall position; in 1981, Peter Sirrs was the successful candidate, and in 1985, Emile Robert won the competition.

Mr. van Diepen was asked a number of questions in French at the interview. He did not have high proficiency in French. On March 14, 1985, Roy Hawkins, Regional Manager (Eastern Region), met with Mr. van Diepen to inform him that he was not the successful candidate. In a note to file, Mr. Hawkins wrote:

I advised him that he was not the successful candidate and that I was somewhat surprised at the lack of content in the responses to his questions. He indicated that he had an “off day” and was disappointed with his own performance.

Mr. van Diepen told Mr. Robert that, but for the fact that he was not bilingual, Mr. van Diepen would have been selected as Area Manager of the Cornwall Probation Office. He was clearly disappointed that he did not win the competition.

The relationship between Mr. van Diepen and the new Area Manager was tense from its inception. And in the approximately thirteen years in which Mr. Robert supervised Mr. van Diepen, their already tenuous relationship further deteriorated.

Other members of the Cornwall probation staff also had a poor relationship with Mr. Robert and considered his managerial style alienating, inconsistent, and adversarial. The friction existed with probation officers as well as administrative personnel.

Ron Gendron, another probation officer, considered Mr. Robert a poor manager. He contrasted Peter Sirrs to Emile Robert and described their management styles as “day and night.” In his view, Mr. Robert did not have the competence or requisite skills for the position. Mr. Robert, he said, tended to micro-manage the office, “he was very self-centred,” and “some of his decision-making was quite questionable.” Mr. Gendron thought that there must have been “a small talent pool for the position” of Cornwall Area Manager in the 1985 competition.

Mr. Robert had an unsettling welcome at the Cornwall Probation Office when he arrived in 1985. In the first week, when he was on a telephone call with his superior, Roy Hawkins, Jos van Diepen flung an elastic band at Mr. Robert’s forehead. Moreover, soon after his arrival in Cornwall, Mr. van Diepen asked Mr. Robert if he could borrow the VHS recorder from the office for the weekend for his personal use. Mr. Robert testified that despite his refusal, Mr. van Diepen removed the video recorder from the probation office and left a note with the inscription “taken by Jos van Diepen.” There were other arguments regarding office rental cars and expense accounts. Mr. Robert testified that Mr. van Diepen often called him names and swore at him. It was clear to Mr. Robert from his first few days at his new position that the probation staff did not respect him.

Mr. Robert believed that Mr. van Diepen’s behaviour had an impact on other

employees such as Carole Cardinal, Ron Gendron, and Louise Quinn, who were all members of the same union. Mr. Robert thought that Mr. van Diepen's conduct was a significant cause of the tense work environment. The Area Manager denied that he treated employees inconsistently or that during audits he scrutinized Mr. van Diepen's files more harshly than those of other probation officers.

Ms Cardinal maintained that Mr. Robert's "management style was certainly not conducive to promote a healthy work environment." As she said at the hearings, the relationships between Mr. Robert and his staff "were not positive ... [T]here was a certain lack of respect with Mr. Robert." He was "difficult to communicate with" and he did not treat the probation staff in an equal manner. The Area Manager was arbitrary; this extended to, for example, scheduling vacations, conducting case audits, and signing time sheets at the office. Ms Cardinal testified that Mr. Robert showed a preference for certain probation officers and that he had a "closed eye to some events," particularly those involving Ken Seguin.

Probation staff described tension in the relationship between Mr. Robert and Mr. van Diepen. As Mr. Gendron said, "Mr. van Diepen would have had more conflict with Mr. Robert than anybody else." In Mr. Gendron's view, the only good working relationship in the office was between Mr. Robert and Ken Seguin.

Mr. van Diepen testified that he was ostracized and singled out: he was subject to discipline and criticism by Mr. Robert when others in the office who engaged in the same conduct were not:

... [T]he discipline dealt with a number of activities that officers did from time to time, and the result was that there was no action taken against them and yet there was disciplinary action taken against me ... or there would be some kind of a reaction to what I did where it didn't happen in other cases.

Mr. van Diepen stated in his evidence that he had initiated a number of grievances against Mr. Robert and that the outcome was an apology to him from the Area Manager.

Roy Hawkins was the Regional Manager of the Cornwall office when Mr. Robert became the Area Manager in 1985. He noticed the tension between Mr. Robert and probation officer Jos van Diepen. He attributed it to Mr. van Diepen's disappointment that he had not been selected as Area Manager of the probation office. This tension did not dissipate throughout Mr. Robert's tenure as Area Manager, testified Mr. Hawkins. The Regional Manager made the following observation about the relationship between staff and the Cornwall Area Manager:

When I moved to Eastern Ontario from Toronto, one of the things that I had observed was that there's quite a cultural difference between a large metropolitan city such as Toronto where there are literally hundreds of probation officers interacting with each other on an ongoing basis and an office like Cornwall where you might have eight or ten or twelve probation officers and in a sense it's a—it's a remote, removed location from—relative to a place like Toronto. The probation officers, in terms of their responsivity to supervision from an area manager and from contact from regional office was certainly much more distant, and I don't know if the word less trustful would be the correct word to use but—but they seemed to—seemed to operate much more autonomously than would have been my observation in other locations.

...

[I]t's an observation that I make but I think it's also a very limiting type of culture to develop. I think that most of us benefit from interaction with other professionals in the field and in other locations. To some extent geography limits what can happen in a place like Cornwall but by the same token when persons come in—whether it's from the regional office or from other locations, I think that there is an opportunity to benefit from whatever strengths or gifts they might have to enrich the experience of probation and parole officers here.

Mr. Robert's management style clearly had an impact on the morale of the office. And importantly, it had an effect on the willingness of probation staff to communicate with him and to discuss problems at the Cornwall office. Ms Cardinal limited "contact to only when necessary." Similarly, Mr. Gendron was reluctant to share any concerns he had with his Area Manager, Mr. Robert:

... [W]e all had trust issues with Mr. Robert, including me. I did not trust Mr. Robert on many levels.

He wasn't one to be trusted ... he would mismanage things.

...

... Mr. Robert ... he wasn't a competent manager. It's that simple. You didn't have faith in him. You didn't have confidence in him.

Mr. Gendron "tended to avoid Mr. Robert as much as possible." Mr. van Diepen also described the effect of low morale and poor communication between the Area Manager and the Cornwall staff. Mr. van Diepen's relationship with Mr. Robert progressively "deteriorated." As he said in his evidence, "I can certainly

tell you that he affected the morale for me and I certainly did not like his management style.” Mr. van Diepen stated that it had an impact on the ability of probation staff to do their work and, at times, the office was dysfunctional. But a serious effect of this poor communication, Mr. van Diepen said, was that it inhibited probation staff from speaking freely to Mr. Robert about concerns that arose in the workplace. He described the work environment as “poisoned.”

As I discuss in this chapter, the serious problem that emanated from the poor communication was that probation staff did not discuss with Mr. Robert the questionable and inappropriate conduct that they observed between probation officer Ken Seguin and probationers. Staff at the Cornwall Probation Office were worried that if they disclosed some of their observations and concerns, the Area Manager could react negatively and impose adverse consequences on them.

Relationship Between Area Manager Emile Robert and the Cornwall Probation Staff: Double Standards and Preferential Treatment of Ken Seguin

As mentioned, probation officers in the Cornwall office testified that Emile Robert’s management style was responsible for a poisoned work environment and a dysfunctional office. Mr. Robert was described by his staff as arrogant, demeaning at times, lacking in social skills, and arbitrary. Mr. Robert, they said, did not treat the probation officers equally and, in particular, favoured Ken Seguin. Problems between Mr. Robert and his staff were evident in the early 1990s and the situation deteriorated. As will be discussed, a mediator was ultimately sent to the Cornwall Probation Office to try to defuse the tensions and improve the relationship between the Area Manager and his staff. In 1998, Mr. Robert was transferred from the Cornwall Probation Office by Ms Deborah Newman, the District Administrator at the Ministry of Correctional Services.¹⁹

Probation officers gave examples of the unequal treatment by Mr. Robert in such matters as vacation scheduling, case audits, sign-out sheets, and other office practices. Probation staff explained that the general procedure for case audits was for the Area Manager to select seven to ten cases to review. But as Ms Cardinal explained, some probation officers, such as Jos van Diepen, were

19. In 1996, Ms Newman became District Administrator. In late 1998–99, she was seconded to the federal government to act as a director at Human Resource Development Canada. She was asked to return to the Ministry of Correctional Services by Morris Zbar to be Regional Director of the Eastern Region. In September 2000, she became Assistant Deputy Minister and in September 2005, Deputy Minister, her position at the time of her testimony at this Inquiry.

subjected to a much more onerous process: many more of his files were scrutinized. As Ms Cardinal testified, Mr. Robert imposed different practices for different probation officers. Carole Cardinal gave another example of Mr. Robert's unreasonable behaviour; she entered the office one morning at 8:33 a.m. and saw him staring at his watch, visibly upset that she was three minutes late. Mr. Gendron confirmed that Mr. Robert micromanaged the office and that "some of his decision-making" was questionable.

It was apparent to staff within a few years after Mr. Robert became the Area Manager of the Cornwall office that he gave preferential treatment to Ken Seguin. This favouritism, as mentioned, was exhibited in the scheduling of vacations, in failing to enforce office practices such as the sign-out sheets, and in having a "closed eye to some events" in which Mr. Seguin was involved. As Carole Cardinal said, Mr. Robert allowed Mr. Seguin "certain leverage that maybe others would not be granted." Mr. Robert's favouritism to Ken Seguin was also described by probation officers Ron Gendron and Jos van Diepen. The Area Manager's failure to discipline Mr. Seguin for improper behaviour with probationers, in particular his poor judgment in the Gerald Renshaw living arrangement as well as in the Varley incident, further consolidated their view that Mr. Robert gave special treatment to Mr. Seguin.

Mr. van Diepen, who had a very turbulent relationship with Mr. Robert, testified that problems in the office were exacerbated by the fact that Ken Seguin was the "office snitch." Mr. Seguin "tattled on his fellow employees" and in Mr. van Diepen's view, "compromised himself as a fellow staff employee and a colleague."

The favouritism displayed to Ken Seguin by Mr. Robert and the poor communication and conflict between Mr. Robert and the rest of the staff resulted in an unhealthy work environment. Ms Cardinal and other probation officers minimized their contact with the Area Manager as much as possible, and staff did not feel they could approach Mr. Robert with their concerns. As Ron Gendron said, "I did not trust Mr. Robert on many levels ... He wasn't one to be trusted," and "we all had trust issues with Mr. Robert." Mr. van Diepen also maintained that Mr. Robert's management style had an adverse impact on how he and other staff discussed problems and areas of concern in the workplace. As Mr. Gendron said:

With Mr. Robert ... he wasn't a competent manager. It's that simple.
You didn't have faith in him. You didn't have confidence in him ...
[Y]ou knew that he wasn't going to deal with this appropriately.

Staff at the Cornwall Probation Office were of the view that the Area Manager lacked judgment and social skills and acted arbitrarily. The lack of trust in the Area Manager, the preferential treatment by Mr. Robert of Mr. Seguin, and the conflict

in the office between Mr. Robert and his staff created a situation in which probation officers were reluctant to discuss with the Area Manager concerns they had about Mr. Seguin's inappropriate behaviour with probationers and other young people. This was a significant problem.

Had Mr. Robert's managerial skills been better, had staff had a healthier and more trustful relationship with their Area Manager, and had Mr. Robert not given Mr. Seguin preferential treatment, it is possible that some of the inappropriate conduct between Mr. Seguin and probationers would have been disclosed and dealt with by Ministry officials at an earlier time. This may also have prevented other young men from being subjected to sexual and other inappropriate acts by Mr. Seguin.

Relationship Between Ken Seguin and His Clients

Probation officers and administrative staff at the Cornwall Probation and Parole Office thought Mr. Seguin had a particularly close relationship with probationers. They described his relationship with Ministry clients and former clients as "unusual," "very friendly," "too close," and crossing a boundary. Many of the Cornwall probation staff assumed or knew that this probation officer was gay but maintained that they either did not suspect or did not believe Mr. Seguin was engaging in sexual relationships with probationers or former probationers.

Mr. Seguin was the most senior probation officer at the Cornwall Office. He was known as "Mr. Probation." As his co-worker Sue Lariviere said, "I always saw him as going beyond the call of duty" and "he always looked to do whatever it was that they [probationers] needed in terms of getting a job or those kinds of things." She further commented:

... [H]is work was immaculate. There was nothing that you could say about his work. He did everything he could possibly do to help people and he—his case notes were perfect, his desk was perfect, he was perfect; he came in in a suit and tie every day.

It was just somebody that you admired and felt that he was very professional in what he did.

Ron Gendron, another probation officer in Cornwall, used similar language to describe Mr. Seguin:

Ken would really go beyond the call of duty with his clients ... Ken would just do things with his clients that no other probation officer

really did. He was admired and respected for it because he went the extra mile for clients and other probation officers didn't.

...

Ken was very helpful. He was always trying to assist them with their life.

Mr. Gendron further described Mr. Seguin's relationship with Ministry clients. It was not unusual for Mr. Seguin to drive probationers to their place of employment. Moreover, if Ministry clients needed workboots for a job, Mr. Seguin would, without hesitation, access the probation office's special needs assistance fund to buy the boots or other supplies or equipment required by the probationers. Some of the Ministry clients had substance abuse problems and did not have transportation to treatment centres such as St. Raphael's, located about twenty miles outside the City of Cornwall. Mr. Seguin willingly drove probationers to the treatment centre. Mr. Seguin was very attentive to the needs of Ministry clients, said Mr. Gendron:

Other probation officers wouldn't do that. They just—they'd say, you know, "You're required to be there; be there. That's your problem getting there." And they were—they would have to find their own transportation there or—

Ken wouldn't take that approach. He'd make sure they'd get there because it's important to him ... [that] they get substance abuse treatment.

...

Ken was very friendly with clients.

Mr. Gendron testified that Mr. Seguin had a philosophical approach different from that of other probation officers in the Cornwall office; he subscribed to a "social work" rather than a "law enforcement" approach. Mr. Seguin was considered by his peers to be lenient in terms of enforcing probation orders such as community service, restitution, and reporting requirements. In Mr. Gendron's view, Mr. Seguin "had a wider definition of 'wilful failure' than most probation officers."

Jos van Diepen agreed. One of his clients complained to Mr. van Diepen for requiring him to complete his community service and argued that Mr. Seguin did not enforce the prescribed hours of community service. Mr. van Diepen testified that there was clearly a difference between him and Mr. Seguin in terms of enforcement of conditions of probation of Ministry clients:

... [W]hen we're getting to a situation where there is a wilfulness, a knowing wilfulness and a failure to comply, then we're talking about the potential for a breach. And in those situations, I would be forced to file a breach ...

But Mr. Seguin, on the other hand, this stuff would be swept under the rug.

Probationers would often request Mr. Seguin as their probation officer. This was confirmed not only by staff in the Cornwall office but also by the Area Manager, Emile Robert.

Ms Cardinal thought that Mr. Seguin went beyond the call of duty of a probation officer and that he was inclined to give the benefit of the doubt to Ministry clients. She also noticed that some probationers repeatedly asked to have Mr. Seguin as their probation officer. She heard him referred to as "Mr. Probation" and thought this was an apt description of him. Administrative assistant Marcelle Léger agreed that Mr. Seguin spent more time with and paid more attention to Ministry clients, on average, than other probation officers. Mr. Gendron also confirmed that many probationers requested Mr. Seguin as their probation officer rather than himself or Mr. van Diepen. He attributed this to the philosophical differences between the social work approach subscribed to by Mr. Seguin and the law enforcement approach adhered to by the other Cornwall probation officers; Mr. Seguin was clearly more lenient in terms of enforcing probation orders.

Probation staff provided other examples of Mr. Seguin's close relationship with probationers. Ms Cardinal testified that when she was at the Cornwall jail, corrections officers mentioned Mr. Seguin's frequent visits to the custodial facility, which they considered unusual. Moreover, Ms Cardinal and other probation staff watched Mr. Seguin smoke and chat regularly with Ministry clients outside the office. Jos van Diepen described Mr. Seguin's conduct with probationers as "cigarettes and fraternization, socializing ... chummy with clients rather than being professional." Mr. van Diepen stated that when he and Ken Seguin went to a local pub for a drink, Mr. Seguin socialized with Ministry clients. In Mr. van Diepen's opinion, Ken Seguin engaged with his clients "socially rather than professionally" and was "not performing the duties properly ... as a probation officer." He was too "close" to his clients. Ron Gendron also observed that "Ken had a lot of social interactions with clients." Mr. Seguin mentioned to Mr. Gendron that a Ministry client had dropped by his house and that they had had a few bottles of beer. Mr. Gendron considered this "unusual for a probation officer, but more typical for Ken." Mr. Gendron also

noticed that probationers visited the probation office to see Mr. Seguin when they weren't required to be there.

Mr. Gendron was "worried that Ken was putting himself in a position of being vulnerable and compromising himself." He elaborated:

Ken would do these extraordinary things with his clients. You know, it's great to be ... Mr. Perfect Probation Officer, but at the same time, those things can really backfire on you, and I was worried that that could happen with Ken.

In Mr. Gendron's view, Area Manager Emile Robert was in a supervisory position and, consequently, had the authority to instruct Mr. Seguin not to have smoke breaks with Ministry clients or to take private rides with probationers. But Mr. Robert never appeared to take such action. Mr. Gendron described Mr. Robert's approach to Mr. Seguin in contrast to other probation officers at the Cornwall office:

Emile had double standards. He had one standard for one probation officer, another standard for another. He had different standards for me; he had different standards for van Diepen; he had different standards for Seguin.

Cornwall probation officers and staff, such as Marcelle Léger, assumed that Mr. Seguin was gay but claimed they did not know he was having sexual relations with probation clients. When Ms Cardinal began her employment at the Cornwall office in 1982, Mr. Seguin was about forty years old, was not married, and did not have children. In the following ten years in which she worked with him, Mr. Seguin did not seem to date any women and "he never asked" Ms Cardinal "once" to set him up with her single women friends:

I knew that he had never married, that he had no children. I don't recall him ever mentioning that he was dating anybody. I don't recall ever mentioning a girlfriend or any significant partner.

...

I assumed that he was homosexual.

...

... [B]y the time I commenced, he would have been almost 40 and I'm employed there for another 10 years and I've never seen him date any women. I'm also fortunate to have a number of attractive, single

women friends and he never asked me once to set him up with any of my friends.

Mr. Gendron said a Ministry client entered his office one day and mentioned that another probationer was meeting with the “homosexual probation officer.” Mr. Gendron testified that although he and others may have thought that Mr. Seguin was gay, “that didn’t mean he was having sexual contact with clients.” Mr. Seguin “would come into the office and say he had a date on the weekend with some woman,” said Mr. Gendron, but:

... we never saw any woman ... I’d never known him to—to date women and that was over a 10-year period, and most of his friends were men and they weren’t married. They were single men.

So you just wondered if he was gay, and I did.

Mr. Gendron knew that Mr. Seguin engaged in improper social interactions with clients and that he might be gay, but maintained that he “did not know Ken was sexually involved with his clients.” Mr. Gendron added:

He was breaking the rules socially. He was breaking a conflict of interest rule that the manager knew about. He knew. Emile Robert knew that. He knew more than I did. He knew more than the probation officers did.

Mr. Robert knew that clients would often request Mr. Seguin as their probation officer. The Area Manager was also aware that Mr. Seguin smoked with Ministry clients outside the office. In his interview with Paul Downing, a special investigator at the Ministry, Mr. Robert mentioned that he saw “a number of rough looking youth in Seguin’s car” on Water Street in the early morning, which raised concerns for him as an employer. Mr. Robert discussed his observation with Mr. van Diepen, who told the Area Manager that Mr. Seguin had hired young people to rebuild his boathouse.

Bill Roy, who had succeeded Roy Hawkins as Regional Manager (Eastern Region), was also aware of Mr. Seguin’s sexual orientation. At a number of meetings, he noticed that Mr. van Diepen made negative comments about homosexual behaviour. In his interview with Mr. Roy in 2000, Paul Downing wrote:

Bill said he thought it was odd that Jos was a good friend of PPO Ken Seguin, however, he (Jos) was very negative about homosexual

behaviour (Ken was homosexual). Bill said that he heard Jos express his feelings about homosexual conduct during a number of meetings at the Cornwall Probation & Parole Office.

Paul Downing thought Mr. Robert knew that Mr. Seguin was associating with Ministry clients outside the workplace. This behaviour clearly contravened Ministry policy. In his interview with the Area Manager in 2000, Mr. Downing concluded that Mr. Robert strongly suspected Mr. Seguin was violating Ministry rules with regard to associating with offenders under the supervision of the Ministry.

Mr. van Diepen made inconsistent statements in his evidence as to his knowledge of Mr. Seguin's sexual orientation. But it is clear that Mr. van Diepen, like other probation officers in the Cornwall office, thought Mr. Seguin was gay. Between comments made in the probation office, his observations of Mr. Seguin's relationship with probationers, and interviews with the Ontario Provincial Police (OPP), it is evident that Mr. van Diepen believed Mr. Seguin was gay.

It is noteworthy that inscribed in a statement Mr. van Diepen made to the OPP in 1994 are the words "I know Ken's boyfriends." Mr. van Diepen claimed he did not make this statement to OPP Constables Genier and McDonnell. According to the OPP, Mr. van Diepen amended the statement four and a half years later to "I knew some of Ken's male friends." Mr. van Diepen claimed that any amendments he made to the 1994 police statement were done around the time the statement was made, not four and half years later. This is further discussed in Chapter 7, "Institutional Response of the Ontario Provincial Police."

Mr. van Diepen testified that after Mr. Nelson Barque had resigned from the Cornwall Probation Office for his inappropriate sexual contact with probationers, Area Manager Peter Sirrs made a comment to Mr. Seguin to the effect that if he wished to participate in similar behaviour, Ken Seguin should do it in Montreal. Mr. van Diepen told the OPP:

Nelson's career ended when one of Nelson's client's boyfriend [sic] complained to Peter Sirrs, supervisor, about Nelson being sexually involved with a probationer. Nelson handed in his resignation shortly after.

...

Peter Sirrs told Ken once around the time Nelson got the boot, to go to Montreal if he got those tendencies. Ken asked me afterwards what Peter meant by that. I told him if you're queer, don't do it here.

Mr. van Diepen stated that Mr. Seguin was upset by Mr. Sirrs' comments and discussed them with him after Nelson Barque's resignation. Mr. Sirrs testified that

he did make this comment, but it was to Mr. Barque at the time of his resignation. The former Area Manager of the Cornwall Probation Office agreed this was “probably an inappropriate comment to make.” Mr. Sirrs had no recollection of making such a statement to Mr. Seguin.

Mr. van Diepen was also aware in the late 1980s that Gerald Renshaw, a former probation client, was living with Ken Seguin at his home in Summerstown. He believed that Mr. Renshaw and Mr. Seguin were in a sexual relationship. Mr. van Diepen told the OPP in 1994 that “Ken and Gerry were lovers.” He also said: “I think Emile Robert knew that Ken was a homosexual. Ron Gendron & I tried to talk to Ken about his clients living there and that but Ken would always tell us to get out of his office.”

As I discuss further in the following sections, despite the fact that the Cornwall Area Manager and some of the probation staff knew Mr. Seguin was socializing with clients, contrary to Ministry policy, they failed to report this behaviour to their superiors.

Gerald Renshaw Moves in With His Former Probation Officer

Area Manager and Regional Manager Informed of the Renshaw–Seguin Living Arrangement

On March 10, 1989, Emile Robert received correspondence from Ken Seguin to the effect that a former probationer, Gerald Renshaw, would be renting a room in his house the following day. Mr. Seguin informed his Area Manager that he had supervised Gerald Renshaw from 1984 to 1986 and that, to his knowledge, Mr. Renshaw had not been in further trouble with the law. The letter stated:

SUBJECT: EMPLOYEE CONTACT WITH AN EX-OFFENDER

In accordance with Ministry Policies and Procedures, I wish to advise that, as of March 11, 1989, I will be renting a room in my home to Gerald Renshaw who was under my supervision from October, 1984 to April, 1986.

To my knowledge, he has not been in any further difficulties with the law and does not have any pending difficulties with the law.

Kenneth G. Seguin
Probation and Parole Officer.

Mr. Robert discussed the contents of the letter with Mr. Seguin on March 10, 1989, the day he received this correspondence. In his testimony, the Area Manager

claimed that he reviewed the Ministry policy on conflicts of interest with Mr. Seguin. Mr. Robert stated that according to policy at that time, it was necessary only for Mr. Seguin to advise him in writing of his contact with a former client. Mr. Seguin was not required to obtain the permission of his Area Manager to have his former probationer reside with him. During this discussion, Mr. Seguin reiterated to Mr. Robert that he had supervised Gerald Renshaw when he was on probation several years earlier and that no further offences had been committed since that time. Mr. Seguin explained that Mr. Renshaw was experiencing difficulties in his relationship with his girlfriend and was looking for a place to live for a short, but indeterminate, period.

Mr. Robert claimed that he instructed Mr. Seguin to postpone Mr. Renshaw's move into his home until Mr. Robert had some time to consider the matter. As mentioned, the letter sent by Mr. Seguin stated that Gerald Renshaw would be residing with him from the following day, March 11, 1989. Mr. Robert testified that Mr. Seguin failed to disclose that Gerald Renshaw was, in fact, already living with him.

The May 1986 policy on conflict of interest governed Ken Seguin at the time he discussed with Mr. Robert the lessee/lessor arrangement of Gerald Renshaw at his home. This policy was applicable to all public servants in Ontario. Conflict of interest was defined as:

... a conflict between a public servant's personal interest and his/her responsibility as a public servant. *This includes actual or perceived conflicts and those which have the potential to be actual or perceived.*
(Emphasis added)

The policy stipulated that each public servant should identify and disclose to their superior any possible conflict:

Each public servant:

- a) Shall identify and disclose to his/her deputy minister, agency head or minister, as the case may be:
 - any possible conflict of interest, even though its significance may be thought to be marginal;
 - any conflict of interest in which he/she might derive personal benefit from a matter which, in the course of his/her duties as a public servant, he/she is in a position to influence;
 - any position of conflict with the interests of the Crown arising from any of his/her outside activities; and
- b) Shall abide by the advice given to him/her.

It is important to note that three months after Mr. Seguin informed Mr. Robert that a former probationer would be living with him, the Ministry issued a new policy on employee contact with ex-offenders, their families, and friends. It stipulates that the Ministry employee must both advise in writing and seek permission of his or her supervisor to have contact with an ex-offender. Issued on June 21, 1989, portions of the policy stated:

It is the responsibility of every employee in the ministry to ensure that any relationship of a personal nature with an offender, ex-offender and the family and friends of offenders and ex-offenders be reported in writing to the employee's chief administrator. Any professional relationships with ex-offenders, their families or friends must also be reported to the employee's chief administrator.

For the purposes of this policy the term offender refers to any adult or young offender with a criminal conviction. A relationship includes any contact which could potentially affect the ministry as indicated in the purpose statement.

This policy applies equally to all ministry employees.

PURPOSE

The purpose of this policy is to ensure that employees will not be subjected to pressure or be compromised in such a way as to jeopardize the security of ministry facilities, the care, custody and control of offenders, and the effective functioning of ministry programs.

PROCEDURE

When an employee is engaged in a personal relationship with an offender, ex-offender or the family and friends of an offender/ex-offender, the employee must advise the chief administrator in writing of the situation as soon as it is known or ought reasonably to be known by the employee. *The chief administrator will determine whether this relationship constitutes a possible threat to the effectiveness and security of a ministry program. The chief administrator will advise the employee in writing of his/her decision, which in certain circumstances may include an order to terminate the relationship.* This procedure will also apply to professional relationships with ex-offenders and their families and friends.

When reviewing a reported relationship, chief administrators will consider factors such as a conflict of interest, favoritism, undue influence, and breaches of confidentiality and security before coming to a decision.

Disciplinary action may be taken where the relationship is not reported or an order to terminate is not obeyed.

(Emphasis added)

Mr. Robert testified that he circulated the new June 1989 Ministry policy to his employees when it was issued.

In Mr. Robert's view, it was incumbent on Mr. Seguin to report and seek his permission only if the probation officer had contact with family members of Gerald Renshaw. Mr. Seguin, he said, had advised him in writing that a former probationer would reside with him, in compliance with the former policy, in effect at that time, in March 1989.

Mr. Robert does not think that he reviewed Gerald Renshaw's file at the probation office after his discussion with Mr. Seguin. At that time, Mr. Robert did not know that some of Gerald Renshaw's brothers had been probationers supervised at the Cornwall Probation and Parole Office. Mr. Robert claimed that he knew the probation office had clients whose surname was "Renshaw" but did not know that these individuals were related to "Gerry." Robert Renshaw, Gerald's brother, testified that Mr. Seguin had sexually abused him and that some of the abuse had occurred at the Cornwall Probation Office. He also stated that Mr. Seguin introduced him to Father MacDonald, a priest who several boys and young people in Cornwall alleged had sexually abused them.²⁰ Mr. Robert maintained that if Mr. Seguin had links to siblings of Gerald Renshaw, it was Mr. Seguin's responsibility to advise him of these connections. However, Mr. Robert acknowledged that in retrospect, perhaps he should have asked Mr. Seguin in March 1989 whether Gerald Renshaw was related to the other Renshaw boys who had been on probation in Cornwall.

In my view, Mr. Robert should have performed some due diligence and checked the files at the probation office on Gerald Renshaw and his brothers. As Regional Manager Roy Hawkins stated, Mr. Robert should also have obtained information on Gerald Renshaw's current circumstances.

Mr. Robert considered this an unusual situation. He had asked Mr. Seguin to postpone the move by Gerald Renshaw to his home because Mr. Robert

20. Allegations of sexual abuse of these individuals are discussed in Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall.

wished to consult the Regional Manager about the matter. Mr. Robert explained at the hearings:

Parce que c'était une situation ... qui était pas normal puis que je voulais avoir l'approbation de la Région avant—comme, je voulais me sécuriser comme gérant de secteur pour faire certain que tous les points soient pointés, que tous les “t” soient barrés, pour m’assurer que plus tard, c’est sûr, qu’il n’y ait pas une situation fâcheuse qui arrive puis que je me fasse—
(Emphasis added)

Ten days after receiving Ken Seguin's letter, Emile Robert sent a very brief letter to Mr. Hawkins. Mr. Robert simply enclosed the March 10, 1989, correspondence that he had received from Mr. Seguin, described it as “self-explanatory,” and made the following request: “I would appreciate receiving some direction from you regarding this matter.” When Mr. Hawkins read the letter, he understood that Mr. Seguin intended to rent a room in his house to a former probationer. It was also clear that Mr. Seguin was simply advising his superior and not seeking approval for the living arrangement. The Regional Manager's immediate reaction was that this situation was out of the ordinary.

In Mr. Hawkins' view, contact was to be terminated between a probation officer and a probationer after the supervision ended. Mr. Hawkins was concerned about two issues: (1) access of the former probationer to keys to the office and the security of the Cornwall Probation Office; and (2) assurance that Gerald Renshaw had not been involved in criminal activity in the years after he had been supervised by Mr. Seguin.

Mr. Hawkins sent the following letter to Mr. Robert on March 29, 1989:

I think the most appropriate course of action is as follows:

- (1) Have a CPIC check done on the ex-offender to ensure we know his status in relation to the courts and the criminal justice system.
- (2) After the check is completed, if the ex-offender is clear, advise Mr. Seguin that if Mr. Renshaw should have further encounters with the courts we would appreciate being advised.
- (3) Under no circumstances is Mr. Seguin to write a P.S.R., provide supervision or other services to Mr. Renshaw as a Ministry client.

- (4) Mr. Seguin should be advised to exercise caution re: the keys to the office to ensure that his roomer has no opportunity to duplicate or use same. This is one of our major concerns and I am sure Mr. Seguin will appreciate that.

Last but not least, if you have any concerns please do not hesitate to contact me.

Mr. Hawkins wanted a Canadian Police Information Centre (CPIC) check on Gerald Renshaw; that is, verification of electronic police records to assess whether this man had been involved with the justice system since his probation, as well as details of his criminal record. Mr. Hawkins also advised Mr. Robert that if Gerald Renshaw had encounters with the law in the future, the probation office should be notified, and that Mr. Seguin should not be involved in any supervisory role if Mr. Renshaw again became a Ministry client. As mentioned, Mr. Hawkins also had concerns about the security of the Cornwall Probation Office, in particular that “a former probationer living with a probation officer might have access to the keys, gain access to the office and confidential information on either his own files or other files.”

After Mr. Hawkins sent this letter and discussed these issues with Mr. Robert at the end of March 1989, he had no further involvement with the Gerald Renshaw issue.

Mr. Hawkins did not know the details of Mr. Renshaw’s former conviction or probation three years earlier. Nor was he familiar with Mr. Renshaw’s current situation: his personal circumstances, whether he was employed, or his relationship with Mr. Seguin. None of this information had been provided by Emile Robert. As the Regional Manager said at the hearings:

Well, I think that before an area manager puts forward a request to a regional manager, a regional administrator, for direction that one would expect a fair amount of the biographical and criminal record be communicated.

...

... I think that there could be a fair amount of investigation done and information put forward with regard to the specifics of the client criminal record, nature of offence committed, employment circumstances; a whole host of things could be looked at and included in there.

But really there was no information given to me ...

...

And also one has to wonder about probation officers and clients, is there anything that ought to be of concern about that specifically in relationship to this case. (Emphasis added)

But Mr. Hawkins agreed that he could have asked for this information. He also said that if it had come to his attention that individuals in the Cornwall Probation Office knew or suspected that Mr. Seguin and Mr. Renshaw were in a sexual relationship, this “absolutely” would have changed the situation. Mr. Hawkins elaborated:

Changed in the sense that I think that a sexual relationship is a fairly intimate and personal relationship and we’re talking about a person who had been supervising this individual ... [I]t certainly would raise some alarm bells in my mind. (Emphasis added)

Mr. Hawkins had never encountered such a situation in his entire career at the Ministry. At that time, Mr. Hawkins did not have serious concerns or reservations about Mr. Renshaw residing with Mr. Seguin, but, he added, “possibly in retrospect, I should’ve had a problem with it.” In my view, Mr. Hawkins should have followed up with Mr. Robert and asked the Cornwall Area Manager to provide him with information concerning Ken Seguin and his former probationer, Gerald Renshaw. The Regional Manager, by examining a situation he found unusual, might have obtained important information that would have caused him to question the appropriateness of Mr. Seguin’s relationship with Ministry clients and former clients. Mr. Hawkins did not know that staff in the probation office considered it highly inappropriate that former probationer Gerald Renshaw was moving into the home of his former probation officer, Ken Seguin.

On April 7, 1989, Mr. Robert inscribed on Mr. Hawkins’ letter of March 29, “Completed as above. Informed Ken Seguin as above.” Mr. Robert testified that he had conducted the CPIC check, discussed with Mr. Seguin the issue regarding the keys and security of the probation office, and advised Mr. Seguin that if Gerald Renshaw had further encounters with the law, Mr. Robert should be notified and that Mr. Seguin should not supervise Gerald Renshaw in the future. Although Mr. Robert also considered it an unusual situation, he was not unduly concerned about this living arrangement. Mr. Robert testified that he did not question the good faith of Mr. Seguin. However, as I discuss in this section, when Mr. Downing interviewed Mr. Robert in 2000 about the Renshaw situation, it was clear to the Ministry Special Investigator that Mr. Robert had

had concerns in 1989 about Mr. Seguin's association with probationers outside the workplace.

Mr. Robert acknowledged in his testimony that knowing what he now knows, he probably would have handled the situation differently. The former Area Manager also maintained that if Mr. Hawkins had wanted additional information, his superior could have asked him to conduct further investigatory work on Mr. Seguin or Gerald Renshaw. Mr. Robert testified that at no time did Roy Hawkins criticize him for the manner in which he handled the Renshaw situation. In my view, neither the Area Manager nor the Regional Manager of the Cornwall office carefully examined the relationship between Mr. Seguin and his former probationer, nor the propriety of Gerald Renshaw's living arrangement with his former probation officer. This is discussed in further detail in this section.

Reaction of Probation Staff to the Renshaw–Seguin Living Arrangement

In contrast to Mr. Robert, staff at the Cornwall Probation Office testified that they considered the living arrangement of Gerald Renshaw with his former probation officer, Ken Seguin, inappropriate. Mr. van Diepen stated that at the time Gerald Renshaw moved into Mr. Seguin's home, there was discussion about this situation among staff at the Cornwall office. Probation staff were concerned about both the actual and the perceived conflict of interest. Ron Gendron, a probation officer in the Cornwall office, described the arrangement as "bizarre," "startling," "irresponsible," and "inexcusable." As Mr. Gendron said, "I have never heard of a probation officer ever doing that ... I didn't understand why that would happen ... [I]t defies common sense." Gerald Renshaw was a former probation client of Mr. Seguin, and in Mr. Gendron's view, it was inappropriate for the former probationer to live with his probation officer: "[I]t's irresponsible of a probation officer to ever do that ... even if it's an ex-probationer." It was evident to Mr. Gendron that Mr. Robert was once again giving preferential treatment to Ken Seguin.

Mr. van Diepen also "strongly disagreed" with the approach of Ministry officials to the Renshaw—Seguin living situation. At the time that Mr. Renshaw was residing with Mr. Seguin in Summerstown, Mr. Seguin told Mr. van Diepen that Gerald Renshaw owed him a sum of money for a vehicle. In his interview with the Ontario Provincial Police in February 1994, Mr. van Diepen told Constables Genier and McDonnell, "Ken and Gerry were lovers, Gerry owed Ken about \$10,000." Jos van Diepen further stated that after Mr. Seguin's death in November 1993, "there were a lot of rumours and discussions ... that Mr. Renshaw had been living there and that there was a relationship other than just a tenant."

When probation officer Carole Cardinal learned that one of the Renshaw boys was living with Mr. Seguin, she was also “surprised” that Ministry officials had not taken issue with what she perceived to be an “unacceptable” and “inappropriate” arrangement. To Ms Cardinal, the fact that Gerald Renshaw was paying room and board to Mr. Seguin was irrelevant, as was the fact that his probation had ended three years earlier. Ms Cardinal testified about the importance of maintaining a personal and professional boundary with clients and former clients, and considered the Renshaw situation a serious conflict of interest: “[H]aving an ex-offender residing with you ... creates ... a huge conflict of interest”; “it was inappropriate and should not have been approved.”

Louise Quinn, an administrative assistant at the Cornwall Probation Office from 1974 to 1995 who later became a probation officer, said Mr. Seguin openly discussed the fact that a former probationer had moved in with him at his home in Summerstown. As Ms Quinn said at the hearings, “Ken was open about that. He talked about it ... [I]t wasn’t a secret.” She also considered the living arrangement “very unusual.”

When interviewing Emile Robert in 2000, Paul Downing discussed the Renshaw move in 1989 into Mr. Seguin’s home. It was clear to the Ministry Special Investigator that Mr. Robert had had “suspicions” and concerns in 1989 about Mr. Seguin’s association with clients outside the workplace. Mr. Downing testified that in his “experience, it’s not very often that someone who is in Ken’s position would normally be permitted to have an offender live with him” or an “ex-offender.” He would have expected Mr. Robert, in his position of Area Manager, to thoroughly review the matter. Mr. Downing elaborated:

There would have to be some sort of reason, whether it be rehabilitation or programming or a lengthy connection with the ex-offender that ... Mr. Robert might be able to explain that made sense and that the risk management to the Ministry and the public safety was considered.

Allegations by Gerald Renshaw of Sexual Abuse by Ken Seguin

Gerald Renshaw stated that he lived with his former probation officer, Mr. Seguin, for approximately one and a half years. He was having difficulties in his relationship with his girlfriend, and Mr. Seguin’s home in Summerstown was near to his place of work. Gerald Renshaw testified that he, Mr. Seguin, and Mr. Seguin’s boss, “Emile,” signed a paper at the probation office that addressed this living arrangement. Mr. Renshaw confirmed that this document was signed after he had moved into his former probation officer’s home. He also confirmed that on

February 27, 1989, when he was living with Mr. Seguin, Ken Seguin co-signed a personal loan insurance application in the amount of \$9,700 for a vehicle.

Gerald Renshaw testified that he was sexually abused by Mr. Seguin over a number of years. It began when he was on probation under Mr. Seguin's supervision. Gerald Renshaw stated that Mr. Seguin threatened to send him to jail if he did not comply with his sexual demands. Mr. Renshaw also testified that Mr. Seguin socialized with teenaged boys who were on probation. Gerald Renshaw went to bars with his probation officer, and Mr. Seguin allowed Gerald and other probationers to use his car. These young men, who included Gerald Renshaw, were also invited to Mr. Seguin's home. Mr. Renshaw stated that probationers and former probationers consumed alcohol and smoked marijuana at Mr. Seguin's home.

Gerald's older brother, Robert Renshaw, also testified that he was sexually abused while he was on probation and supervised by Mr. Seguin.

Gerald Renshaw stated that he was again sexually abused when he lived with Mr. Seguin. Mr. Seguin threatened him that if he refused to engage in a sexual relationship, he would be forced to pay all of the loan immediately: "If you don't want to do what I want you to do then I want the loan paid off now, which obviously I couldn't do." Mr. Seguin, he said, was well aware that Gerald did not have the resources to pay the loan. Mr. Renshaw also stated that Ken Seguin gave him money to buy drugs while he was living with Mr. Seguin in Summerstown. Mr. Renshaw testified that the sexual abuse stopped only after he moved out of Mr. Seguin's home. Mr. Seguin tried to initiate sexual contact after that time, but he was not successful, said Mr. Renshaw.

Carol Hesse, the older sister of Gerald and Robert Renshaw, visited Gerald while he was living with Mr. Seguin. For a period before her father's death, Carol Hesse had had custody of her brothers, who were minors. Ms Hesse considered herself a good friend of Ken Seguin. She had visited his Summerstown home many times. Mr. Seguin had disclosed personal details about himself, including his sexuality. Carol Hesse knew while her brother Gerald was living with him that Mr. Seguin was gay. But she thought that Ken Seguin behaved as "a big brother" toward the boys; she believed it was not "any different than Gerry living with one of my other siblings" or any other friend.

Carol Hesse did not have any concerns when her brother Gerald decided to move in with Mr. Seguin in 1989. Shortly after, Gerald invited his sister to the Summerstown home. There were two bedrooms in the house. To Carol Hesse's surprise, her brother's bed was made and the room was tidy; she considered Gerald a "slob." After a comment to this effect to her brother, Gerald's face turned red and he left his room. When she entered Mr. Seguin's room, by contrast, the bed was messy and gym equipment covered the floor. Carol Hesse knew that Ken Seguin was neat and meticulous. When she asked her brother

whether something was “happening here,” Gerald’s response was, “Shut up. You don’t know what you’re talking about. We’re not supposed to be in Ken’s room anyway.”

The relationship between a perpetrator of sexual abuse and a victim is complex. As discussed in the expert evidence, victims often repeatedly and voluntarily return to the offender. They may not fully comprehend or appreciate that they are victims. Perpetrators capitalize on the confusion of their victims. And as was the case with Gerald Renshaw, they offer inducements such as a car loan and a place to live. The perpetrator may resort to financial, emotional, and other threats as a means of controlling the victim.

I agree with Mr. Downing’s conclusion that Mr. Robert ought to have thoroughly reviewed the living arrangement between Gerald Renshaw and his former probation officer, Mr. Seguin. It is clear in both the 1986 Ontario government policy and in the June 1989 Ministry policy that the government is concerned about both actual and perceived conflicts of interest. It was incumbent on Mr. Robert and his superiors to fully examine the relationship between Mr. Seguin and his former probationer to assess whether an actual or perceived conflict existed in their living arrangements. Both Mr Robert and his superior, Mr. Hawkins, considered the living situation very unusual. Had the Renshaw files been examined by Mr. Robert or other senior officials at the Ministry of Correctional Services, information would have been obtained regarding Gerald Renshaw’s probation as well as the probation of his siblings, who had also been under the supervision of Mr. Seguin. Had the Area Manager, Regional Manager, or other Ministry officials probed the situation more fully, perhaps they would have acquired information that would have raised concerns regarding Mr. Seguin’s relationship with current and former probationers.

Gerald Renshaw stated that he signed a document at the probation office with Mr. Seguin and Mr. Robert that addressed this living arrangement. Had Mr. Robert or other senior Ministry officials discussed Mr. Renshaw’s relationship with Mr. Seguin, they might have learned that Mr. Renshaw had moved into Ken Seguin’s home before Mr. Seguin notified Ministry officials, that Mr. Seguin had co-signed a personal loan insurance bank application with Mr. Renshaw, and that Mr. Seguin was very involved with Gerald Renshaw’s brothers and family. Perhaps Gerald Renshaw would have disclosed information regarding inappropriate behaviour engaged in by Mr. Seguin during his probation, or would have raised or confirmed suspicions respecting Mr. Seguin’s interactions with other probation clients.

The 1989 policy explicitly states that Ministry officials should consider factors such as undue influence, favouritism, and conflict of interest. In my view, had Mr. Emile Robert and other officials examined these factors carefully, they might have advised Mr. Seguin that this living arrangement with this former

probationer should not take place. The 1986 Ontario government policy states that a public servant “shall abide by the advice given to him/her,” and the 1989 policy states, “Disciplinary action may be taken where the relationship is not reported or an order to terminate is not obeyed.”

In my opinion, the Ministry of Correctional Services, including the Area Manager and Regional Manager, did not take the appropriate measures to fully examine the living arrangements between Gerald Renshaw and his former probation officer, Ken Seguin. Had the relationship between Mr. Seguin and Mr. Renshaw been scrutinized more carefully, questions might have been raised about the probation officer’s relationships with current and former Ministry clients. It should have been apparent that the living arrangement between Gerald Renshaw and Mr. Seguin raised issues of both perceived and actual conflict of interest.

In 1998, the conflict of interest policy of the Ministry of Correctional Services was updated. The policy was expanded to address the following general categories: outside activities; prohibited use of a position; confidential information; gifts, hospitality, and other benefits; avoidance of preferential treatment including hiring; procurement; political activity; and taking improper advantage of past office. Pursuant to the conflict of interest policy, employees are directed to complete a form concerning possible conflicts of interest and send it to the Deputy Minister. A review is conducted regarding the conflict of interest or potential conflict of interest situation. The employee who submits the form receives a written decision. Pursuant to the current policy:

Any Ministry employee who knowingly enters into, forms or continues a relationship or connection of a personal or business nature with an offender/ex-offender or someone known to be in a close relationship with an offender/ex-offender may reasonably be perceived as being or leading to a conflict of interest or a breach of security and is required to disclose the situation to their immediate chief administrator.

It further states that probation officers must report all conflict of interest and potential conflict of interest situations directly to the Area Manager and to the Deputy Minister. Failure of an employee to comply with this requirement can result in disciplinary measures, which may include termination of employment.

It is my recommendation that the Ministry introduce measures to ensure that its employees receive regular training and updating on conflict of interest principles and the ethical behaviour required of staff at the Ministry of Community Safety and Correctional Services.

The Varley Incident

On the evening of January 8, 1992, four young men arrived at Mr. Seguin's home in Summerstown. One of these males, Mark Woods, was a Ministry client. Travis and Bob Varley, brothers who lived nearby and who often visited Mr. Seguin at his home, were among this group, as was their cousin, Andrew MacDonald. Mr. Seguin supplied alcohol to these four young men. The Cornwall probation officer placed four open beer bottles on the table at his residence and each of the boys drank the beer.

The Ministry client, Mark Woods, was scheduled to attend the Cornwall Probation and Parole Office the following day for a pre-sentence report interview with Mr. Seguin. The pre-sentence report was in relation to the crimes of break and enter and theft.

Mark Woods visited Mr. Seguin at his home that evening as he was worried about the sentence he would receive for the offences and wanted to discuss it with the probation officer. One of the conditions of Mr. Woods' release was a 9 p.m. curfew. Mr. Seguin told the client he should return to his home and not breach his curfew. As the young men were leaving Mr. Seguin's home, one of the Varley brothers went to the refrigerator and took three additional bottles of beer.

After they left Mr. Seguin's residence, Mark Woods was dropped off at his home by the other young men in order to meet his curfew. In the early morning hours of January 9, 1992, at about 4:00 a.m., Travis Varley fatally shot his cousin, Andrew MacDonald, at the Varley home. Travis Varley was charged with second degree murder. He pleaded guilty to manslaughter and several months later was sentenced to two years less a day.

Several important questions arise from the Varley incident. Why did Mr. Seguin allow these young men, and in particular his client, to enter his home? Why did Mr. Seguin supply the young men with alcoholic beverages? Why did Ken Seguin not inform Area Manager Emile Robert of this incident until a week later? Why is important information missing from Mr. Seguin's incident report? Did Mr. Robert allow several months to elapse before he informed his Regional Manager, Roy Hawkins? Why were disciplinary measures not imposed on Mr. Seguin? Why was a Ministry investigation of the Varley incident not undertaken? These are some of the issues that arise in relation to the 1992 Varley incident.

One Week Passes Before Ken Seguin Discusses Varley Incident With the Cornwall Area Manager

Mr. Seguin did not inform Cornwall Area Manager Emile Robert about the Varley incident until one week had passed.

On January 16, 1992, Mr. Seguin told Mr. Robert that the Varley brothers had called him and asked if they could visit the probation officer at his home. Travis and Bob Varley lived nearby in Summerstown, he told his Area Manager, and would occasionally visit. Mr. Seguin claimed that when he opened his door on the evening of January 8, 1992, he did not expect to see two other young men: Mark Woods, a Ministry client for whom Mr. Seguin was preparing a pre-sentence report, and Andrew MacDonald, a cousin of the Varley boys. Mr. Seguin told Mr. Robert that he had been scheduled to meet this Ministry client the following day. Mr. Seguin said that during the visit he learned that a curfew had been imposed on his client. Mr. Seguin told Mr. Robert that he had advised Mr. Woods to return home to comply with his curfew.

Several hours later, Mr. Seguin learned that Travis Varley had shot Andrew MacDonald, one of the young men who had been at his home earlier that evening. The following morning, Mr. Seguin's client called the Cornwall Probation Office to cancel his scheduled appointment with Mr. Seguin.

Mr. Seguin told Mr. Robert that he had been in contact with the Ontario Provincial Police (OPP) about the incident. When Emile Robert asked Mr. Seguin why he had allowed the young men to enter his home, the probation officer's response was that he had felt intimidated. The Cornwall Area Manager testified that he did not accept Mr. Seguin's excuse: "[J]'accepte pas ça comme une excuse." After this discussion, Mr. Robert instructed Mr. Seguin to prepare an incident report.

When asked at the hearings whether Mr. Seguin had disclosed at that time that he had served alcohol to his Ministry client and other visitors, Mr. Robert replied that he could not remember: "[J]e me souviens pas s'il avait parlé s'il avait servi de l'alcool ou pas." Later in his evidence, Mr. Robert stated he did not know that Mr. Seguin had supplied alcohol to these young men until he received the police report of the incident several months later, in September 1992.

Mr. Seguin prepared an incident report after this discussion. As Deputy Minister Deborah Newman explained, an incident report is to be generated when something critical has occurred. She considered the incident at Mr. Seguin's home a very significant occurrence. It was Ministry policy that an incident report was to be prepared immediately after the occurrence of such an event. But the incident report is dated January 16, 1992, eight days after the occurrence. It was sent at that time to Mr. Robert, who initialled it. Mr. Seguin wrote in the report that the Ministry client was "extremely agitated" when he visited the probation officer's home on the evening of January 8, 1992, as the client was "concerned about the possible outcome of his court case." Mr. Seguin also said he had told the client that he "could not address his concerns properly without his file and it would be best to discuss it further at the office the following day." The next morning, at approximately 11:00 a.m., Mr. Seguin received a call from this client, who was very distraught. The incident report states:

He was sobbing and upset and requested to cancel the 1:30 p.m. appointment for his Pre-Sentence Report interview. He went on to explain that after the boys dropped him off at home for the 9:00 p.m. curfew the others apparently went to a local hotel, then later proceeded to the Varley residence near Summerstown where at 4:00 a.m., January 9, 1992, Andrew McDonald [sic] was fatally shot. Travis Varley is being held in custody on a charge of 2nd Degree Murder.

Mr. Seguin stated in the report that the “Ministry of Correctional Services’ client” had arrived at his home “unannounced and uninvited.” He also stated that he had provided a witness statement to the Lancaster OPP regarding the events that preceded the shooting.

Mr. Seguin failed to include important information in this incident report—namely, that he had supplied alcohol to the Ministry client and other young men when they visited his home. This omission was significant and, as probation officer Carole Cardinal said, Mr. Seguin’s behaviour was “inappropriate” and raised issues of conflict of interest:

... [Y]ou should never have a client come to your residence when you are preparing a pre-sentence report. The issue of conflict of interest is huge at that point in time. The optics of being objective as a probation officer can certainly be blurred if the person writing your pre-sentence report is going to your home and consuming alcohol.

So those comments, those sentiments, were certainly shared with Mr. Seguin.

A few days after the January 1992 Varley incident, Mr. Seguin discussed the matter with Carole Cardinal. It is noteworthy that Mr. Seguin also failed to disclose to Ms Cardinal that he had served beer to the young men. A few days after this discussion, Ms Cardinal was in Alexandria, where she learned from Constable McDonell, one of the OPP investigating officers, that alcohol had been consumed at Mr. Seguin’s home that night. She approached Mr. Seguin the following day with this information. Ms Cardinal testified that Ken Seguin “did not deny it; however, he downplayed it and made it clear to me that he had completed an incident report outlining particulars and that Mr. Robert as the area manager was aware of this.”

Area Manager Emile Robert claimed that pursuant to Ministry policy, he faxed the incident report to Mr. Roy Hawkins at the regional office, as well as to the Information Management Unit in North Bay. Mr. Robert testified that he vaguely remembers speaking with Mr. Hawkins at that time, who, he claimed,

instructed him not to impose any disciplinary actions on Mr. Seguin until information on the Varley incident was received from the police. But Mr. Hawkins denied that he received the incident report in January 1992. He also testified that Mr. Robert did not discuss the Varley incident with him at that time. It was Mr. Hawkins' practice to initial documents that he received. Moreover, had Mr. Hawkins received the incident report in January 1992, it is likely there would have been written correspondence from his office to Mr. Robert, as Mr. Hawkins considered this was a "very major incident." Mr. Hawkins also testified that he is "very doubtful" that Mr. Robert spoke to him shortly after the Varley incident, as he would routinely prepare correspondence on file to reflect the discussion of such a significant matter. Mr. Robert could provide no explanation at the hearings for the lack of receipt of the incident report by Mr. Hawkins. The Regional Manager said that he did not become aware of the Varley incident for several months.

Mr. Hawkins testified that he would have expected Area Manager Emile Robert to take action immediately upon receiving the incident report from Mr. Seguin. In Mr. Hawkins' view, the situation was likely to warrant a Ministry investigation, at which time Mr. Seguin's employment would probably have been suspended.

Special Investigator Paul Downing agreed:

Based on the information that was reported and the incident and the previous knowledge or suspicions that Emile had reported having with regards to Ken's association with clients outside of the workplace and based on my experience as a Ministry inspector, this would clearly be a situation that would normally be investigated by an inspector or one in Level 1 investigation. This is a high profile situation that could bring disrepute to the administration of justice having someone in the justice system, at least from the initial information, possibly involved or have knowledge of. (Emphasis added)

At the very least, Mr. Downing thought there should have been a discussion as to whether such an investigation should be undertaken.

Deputy Minister Deborah Newman agreed. She stated that Mr. Robert should have immediately alerted Mr. Roy Hawkins to the Varley incident and should have forwarded the incident report forthwith to Mr. Hawkins and to the Information Management Unit in North Bay:

... [M]y own view, whether it was in 1992 or it was today, my answer would be the same. Yes, it ought to have been the subject of discussion as soon as possible between the area manager and the regional manager

and it ought to have been faxed, in those days, to the Information Management Unit.

It is noteworthy that when Mr. Downing interviewed Mr. Robert in 2000, the former Area Manager of the Cornwall office did not mention either discussing or sending the incident report in January 1992 to Regional Manager Roy Hawkins.

After carefully analyzing the testimony and the documents, I have come to the conclusion that Mr. Robert did not send the January 16, 1992, incident report prepared by Mr. Seguin promptly to Regional Manager Roy Hawkins. Nor did Mr. Robert discuss the Varley incident with Mr. Hawkins soon after the event. Moreover, the Area Manager did not impose any disciplinary measures on Mr. Seguin after the January 8, 1992, incident. Mr. Hawkins did not become aware of the Varley incident for several months.

Mr. Robert testified that he decided not to take any action, such as disciplinary measures, regarding Mr. Seguin's behaviour until he received the police report. This did not occur until September 1992, eight months after the Varley incident. The Area Manager of the Cornwall Probation Office claimed that upon learning of the incident in January 1992, he simply discussed Ministry policies with Mr. Seguin regarding contacts with clients.

Emile Robert's Contact With the OPP

At the end of August 1992, OPP Detective Constable Randy Millar of the Lancaster Detachment had a discussion with Mr. Robert about Mr. Seguin's involvement with the Varley group and the fatal shooting in Summerstown the previous January. Detective Constable Millar sent a report of the incident to Mr. Robert on September 3, 1992. The report was written after Travis Varley had been convicted of manslaughter and sentenced to two years less a day in custody. The OPP report stated that Travis Varley, the deceased Andrew MacDonald, and other friends "drank liquor and beer quite heavily for approximately 17 hours prior to the shooting." Detective Constable Millar stated that Mark Woods, for whom Mr. Seguin was preparing a pre-sentence report at the time, the two Varley brothers, and the deceased arrived at Mr. Seguin's home at approximately 8:00 p.m. on January 8, 1992. Mr. Seguin allowed them access to his home: "[T]he boys explained that Mark WOODS was worried about what sentence he would get for his crime and wanted to talk to SEGUIN about that." Mr. Seguin served each of the boys a beer. As the group was leaving Mr. Seguin's home at about 8:40 p.m., Mr. Travis Varley went to the fridge and took another three bottles of beer.

As I mentioned earlier, Mr. Seguin did not include the information about the beer in the incident report that he prepared. Although Mr. Robert's evidence on this issue was inconsistent, Mr. Robert claimed that until he received the September 1992 police report from Detective Constable Millar eight months later, he was

unaware of the presence of alcohol. He said that he did not know Mr. Seguin had served beer to the four young men or that there had been heavy drinking on the night of the fatality. In other words, Mr. Robert claimed that this information had not been disclosed to him. Mr. Robert considered it unacceptable that a probation officer had allowed his client to enter his home and had served alcohol to the client.

Probation officers in the Cornwall office, such as Carole Cardinal, knew that alcohol was involved in the Varley incident before the police report in September 1992. As discussed, the week after the January 1992 incident, Ms Cardinal learned from one of the OPP investigative officers, Constable McDonell, that alcohol had been consumed at Mr. Seguin's residence. Ms Cardinal and the OPP officer discussed the inappropriateness of this behaviour by probation officer Ken Seguin. Ms Cardinal also said that the Varley "incident was openly spoken about in the office because I was not pleased that Mr. Seguin had entertained and consumed alcohol with these four individuals, and I certainly did voice my comments to other colleagues."

Ms Cardinal prepared the pre-sentence report for Travis Varley, who pleaded guilty in May 1992. She had further discussions with Constable McDonell as well as Crown Attorney Guy Simard, who both expressed concern about the conduct of Mr. Seguin. They stated that they would be discussing their concerns with Area Manager Emile Robert.

Ms Cardinal spoke to Mr. Robert about the discussions she had had with the OPP officer and the Crown attorney when she was preparing the pre-sentence report. Ms Cardinal believes that Mr. Robert was aware at that time that Mr. Seguin had served beer to the Ministry client and to the three other young men; this was because "there was open discussion" in the office about this "inappropriate" behaviour. She also stated that when Mr. Varley pleaded guilty to manslaughter in May 1992, the fact that alcohol was a significant factor in the incident was widely reported in the media. A portion of Ms Cardinal's testimony regarding her exchanges with Mr. Robert follows:

... I remember him specifically saying to me that Mr. Seguin had completed an incident report and had provided a statement to the police with the assistance of Mr. McDonald, who would have been a defence lawyer, and that according to him, he had done everything—Mr. Seguin had done everything that was required and ... that needed to be done.

Ms Cardinal was surprised at the content and tone of the September 3, 1992, report sent by OPP Detective Constable Millar to Mr. Robert. She had expected the police "to voice their dissatisfaction with such ... unprofessional behaviour by a

probation officer.” But the report was not critical of Ken Seguin’s conduct and did not reflect the concerns that the OPP and Crown had previously discussed with her.

In the September 3, 1992, report, Detective Constable Millar writes:

During the interview with SEGUIN, I felt SEGUIN was obviously embarrassed and he made it clear he did not make a habit of having clients at his residence. He emphasizes the fact that he did not realize that Andrew MACDONALD and Mark WOODS would accompany Travis and Bob VARLEY on that night.

The OPP officer also wrote that Mr. Seguin stated that “without doubt he will be more selective on who he allows into his house in the future.”

I discuss the OPP’s involvement in the Varley matter more fully in Chapter 7, on the institutional response of the Ontario Provincial Police.

Regional Manager Learns of Varley Incident Eight Months Later

Five days after receiving the report of Detective Constable Millar, Mr. Robert sent the report to Mr. Hawkins, Regional Manager of the Cornwall Probation Office. In his correspondence, dated September 8, 1992, Mr. Robert wrote that he was enclosing a “self-explanatory letter” from Detective Constable Millar for “Mr. Hawkins’ perusal.” In this brief memo to Mr. Hawkins, Mr. Robert writes:

During the week following this incident Mr. Seguin had advised me of the visit of Travis Varley, Bob Varley, Andrew MacDonald and Mark Woods and the shock he had when he learned of the fatality.

Due to the fact that Mr. Seguin’s involvement was very brief and that he was embarrassed and made it clear that he had not the habit of having clients at his residence, Constable Millar and I recommend that no further action be taken. (Emphasis added)

Mr. Robert testified that he recommended that no action be taken against Mr. Seguin because, based on his discussions with Detective Constable Millar, (1) Mr. Seguin had no advance knowledge that his client would appear at his home; and (2) Mr. Seguin was embarrassed about the incident. Mr. Robert recommended “no further action be taken,” despite the fact that he knew there had been a serious violation of Ministry policies and that he himself believed that Mr. Seguin’s behaviour had been inappropriate.

Mr. Hawkins testified that he was “shocked” and “outraged” when he received the September 8, 1992, correspondence from Mr. Robert. Mr. Seguin’s involvement in the Varley incident was on January 8, 1992, and eight months had passed before Mr. Hawkins was notified about this matter. Mr. Hawkins thought this “very serious incident” had been treated superficially; more research and investigation were necessary. Moreover, he did not consider the information conveyed to him by Mr. Robert to be very credible. The Regional Manager also thought that the inappropriate conduct and judgment exercised by the probation officer was merely the “tip of the iceberg”:

I was surprised and shocked that this very, very serious incident seemed to be dealt with in such a superficial and trivial way. In fact, I would put my language a little stronger than that, I was outraged by the way this was being handled and the recommendations that were being made. I don’t find the evidence that was accumulated and recorded here as being very credible.

...

... I just don’t think that probationers are having social contact with a probation officer under these circumstances without much more going on than is being disclosed to me. And I think what we’re looking at is the tip of the iceberg. And I suspect that there is a big iceberg not being revealed, and I just don’t see anybody digging more deeply to see whether or not this might be in back of the case. (Emphasis added)

Mr. Hawkins also had concerns from this letter about the manner in which the OPP was treating this incident:

... I think that there was a responsibility to go much more deeply into the circumstances and background of what had taken place. On the face of it, it would appear to me that Mr. Seguin’s statements were being accepted at face value in terms of what he said, and I, quite frankly, have an issue of credibility with it.

Deborah Newman, Deputy Minister at the time she gave her testimony at the Inquiry, thought the September 3, 1992, letter from Detective Constable Millar to Mr. Robert disclosed serious issues that merited a Ministry investigation for the following reasons: (1) Mr. Seguin had failed to reveal in his incident report that he had served alcohol; and (2) the probation officer seemed to have significant judgment issues.

Mr. Hawkins responded to Mr. Robert's correspondence on October 16, 1992. The Regional Manager considered Mr. Seguin's involvement in the Varley matter to be "very serious" and in need of immediate attention and resolution. He raised the possibility of disciplinary action against Mr. Seguin. It is evident from his memo that Mr. Hawkins was concerned about access of the Ministry client to Mr. Seguin's home, the serving of alcohol by the probation officer, and the discussions Mr. Seguin had had with a "person before the courts about sentence." The correspondence from Mr. Hawkins to Mr. Robert is as follows:

After careful review of the materials you forwarded to me on the above-noted employee, it would appear that there is a need for meeting and possibly taking disciplinary action.

I assume Mr. Seguin is familiar with the Ministry policy on contact with offenders and ex-offenders. This being the case, I have obvious questions about the apparent ease of access to Mr. Seguin's residence, which included the serving of alcohol and discussion with a person before the courts about sentence. Mr. Seguin was unaware of the earlier consumption of alcohol by his guests, although the police report would suggest they had consumed alcohol prior to their visit to Mr. Seguin.

In any case, my purpose in writing is not to review the discrepancies, but to ensure the evidence is reviewed carefully with Mr. Seguin and that he be given an opportunity to provide credible comment. If discipline is warranted, so be it.

The employee should receive a copy of the police report and be made aware a copy will go in his personnel file. In addition, there should be a review of the Ministry policy with the employee and, if warranted, discipline should be imposed.

This is a very serious matter and must be dealt with fairly, quickly and with a view to ensuring no recurrence.

Mr. Hawkins asked Mr. Robert to review the matter with Mr. Seguin and to obtain additional information on what had occurred the night of January 8, 1992. As Mr. Hawkins explained, "I was telling him that I regarded this matter much more seriously than either he or the police officer who had completed the report seemed to be taking the matter, and I wanted it to be looked at more seriously and thoroughly." Mr. Hawkins questioned whether Mr. Seguin should continue to

be an employee of the Ministry if a pattern of such behaviour by the probation officer was found:

I don't have enough facts, but it's alarming to me, and if there certainly is a pattern of this, I would question whether an employee embarking on that kind of contact with probationers ought to be an employee of the Ministry.

Mr. Hawkins considered the conduct of Ken Seguin "highly suspect"; in his opinion, "the information ... that Mr. Seguin gave was not ... credible information."

It is noteworthy that although Mr. Hawkins viewed the Varley incident as "extremely serious," he did not respond in writing to Mr. Robert's letter for five weeks. Mr. Hawkins could not explain this delay when he testified at the Inquiry.

When Mr. Robert received Mr. Hawkins' October 1992 letter, he knew that the Regional Manager did not agree with his evaluation of the Varley incident. Mr. Hawkins clearly did not concur with Mr. Robert's position (in his September 1992 correspondence) that "no further action be taken" against Ken Seguin. As mentioned, Mr. Robert explained that he had taken this position because Mr. Seguin's "involvement was very brief," Mr. Seguin was "embarrassed," and the probation officer had made it clear that he was not in "the habit of having clients at his residence."

After receiving this letter from his Regional Manager, Mr. Robert decided to send a letter of counsel to Ken Seguin. A letter of counsel is a first warning to an employee that there is behaviour unacceptable to the Ministry that should not be repeated in the future. A letter of counsel is not part of the disciplinary process. As explained by Ms Newman and by Special Investigator Paul Downing, the first step in the disciplinary process is a letter of reprimand. If any employee receives a letter of counsel, in contrast to a letter of reprimand, it is not a subject of grievance.

Mr. Robert decided not to suspend Mr. Seguin, give him an official reprimand, or terminate his employment. Nor did he recommend a Ministry investigation of Mr. Seguin's conduct as a probation officer. The letter sent by Mr. Robert to Mr. Seguin on November 10, 1992, said:

Further to today's meeting I wish to confirm our discussion regarding your involvement with Mr. Mark Woods, a ministry client, on January 9, 1992. Attached is a police report from O.P.P. Detective/Constable R. Miller [sic] which is self-explanatory.

I wish to bring to your attention that it is improper to allow ministry clients to visit your residence and to offer them alcoholic beverages. Further, we have reviewed the ministry policy on employee contact

with offenders/ex-offenders. I have enclosed a copy for your reference. I am bringing this matter to your attention in order that future similar incidents can be avoided. You should be advised that if a similar situation should arise, disciplinary action could be imposed.

If you wish to discuss this matter further please do not hesitate to contact me.

About three months later, on February 5, 1993, Mr. Robert forwarded to Mr. Hawkins the November 1992 letter of counsel to Ken Seguin. In Mr. Hawkins' view, the Cornwall Area Manager "took the minimal amount of action, flowing out of my instructions, that could be taken." Mr. Hawkins considered the letter of counsel "a very weak response to a very serious situation." Mr. Robert had simply cautioned Mr. Seguin that it was improper to permit Ministry clients to visit his home and for Mr. Seguin to serve them alcohol. Despite the breach of Ministry policy on employee contact with clients, Mr. Robert, Area Manager of the Cornwall Probation Office, failed to discipline Mr. Seguin with respect to his contacts with Ministry clients.

No Investigation Recommended

Neither the Area Manager of the Cornwall Probation Office nor the Regional Manager, nor other officials at the Ministry of Correctional Services recommended that an investigation of Mr. Seguin's involvement in the Varley incident be undertaken.

Mr. Robert does not appear to have sought an opinion from Human Resources regarding possible disciplinary measures that could be imposed on Mr. Seguin. The former Cornwall Area Manager stated that had he suspended Mr. Seguin, the suspension would probably have been reduced through the grievance process. When asked why he did not recommend a Ministry investigation into this matter, Mr. Robert responded that such a request was not within his authority but rather was the responsibility of Regional Manager Roy Hawkins. After receiving Mr. Robert's correspondence of February 5, 1993, stating that a letter of counsel had been sent to Mr. Seguin, Mr. Hawkins also did not take any further action.

In Mr. Hawkins' opinion, Mr. Robert could have requested a Ministry investigation of the probation officer's involvement in the Varley matter:

I think he [Mr. Robert] was well aware of the types of discipline that were open to him and if he was either unable or unwilling to do the necessary kind of investigation to get to the root of this, then he certainly would have been aware that I had serious concerns about it. He could have suggested or asked for a Ministry investigation.

... [I]t doesn't have to be the regional administrator who initiates an investigation being done. The area manager could say, "Look, this thing is maybe bigger tha[n] I'm capable of dealing with, could we have the Ministry investigators come in and do it?"

And clearly, Mr. Hawkins himself could have initiated an investigation. As the Regional Manager said in his evidence, he considered the Varley incident a very serious situation, "highly suspect," and was disappointed with Mr. Robert's handling of the matter. Mr. Hawkins acknowledged that in retrospect, a Ministry investigation was something he should have considered:

COUNSEL: ... [I]f you could have done things differently in this particular case, you suggested that one option would have—you could have considered a Ministry investigation?

MR. HAWKINS: Yes, absolutely.

COUNSEL: And looking at it today, that's probably where you would have gone?

MR. HAWKINS: Probably would have been the route I went.

COUNSEL: And if that type of Ministry investigation came back indicating that the matter was viewed as more serious than perhaps as outlined in the OPP letter, then you could have considered more severe discipline?

MR. HAWKINS: More severe discipline, up to and including termination of employment.

Mr. Hawkins agreed that the grievance process had a chilling effect on the willingness of a manager to impose discipline on a Ministry employee. Decisions made by managers were often successfully challenged. The reluctance of managers to impose disciplinary measures, Mr. Hawkins conceded, was clearly a problem.

Deputy Minister Deborah Newman also discussed the impact of the grievance process on the willingness to impose disciplinary measures on Ministry employees: "[I]n order to have discipline that's upheld, there may be times when you think you'd like to take more serious discipline but you know that it won't be upheld and ... if you terminate that employee they will be reinstated." She was not surprised that "it became a consideration for some managers ... [W]e were beaten

down by grievances.” Ms Newman said there is a “backlog of 10,000 grievances at any given time” at the Ministry:

This is a very litigious Ministry with a very strong tendency to file grievances as a response and we’ve had cases go to the grievance settlement board where you may think it’s a very clearcut case for termination, and we’ve lost those ... cases and had employee[s] reinstated, so it does get to be—people become weary of trying to do the right thing and getting beaten down, I guess, in the view of some managers.”

But Ms Newman thought a Ministry investigation of the Varley matter should have been undertaken. As she said in her testimony, “[I]f that were my decision at that time ... I would have requested an investigation.” Ms Newman also agreed that if the Area Manager was not inclined to investigate, the Regional Manager could override that decision:

In my opinion, there ought to have been an investigation conducted when the incident report came in to uncover all of the facts, including liaison with the police and sharing of information.

Based on the findings and determinations of the investigation, then there ought to have been a disciplinary meeting and there ought to have been consultation between the regional manager and the area manager as to the appropriate degree of discipline.

Ms Newman considered the absence of an investigation a missed opportunity to seek more information about the behaviour of the Cornwall probation officer. I agree. In my view, Mr. Hawkins, Mr. Robert, and other Ministry officials should have initiated an investigation into the Varley incident and Mr. Seguin’s contacts and relationship with Ministry clients.

Cornwall probation officers, including Carole Cardinal, were unaware that Mr. Seguin had not been disciplined for his behaviour in the Varley incident. It was not until shortly before Ms Cardinal testified at this Inquiry that she learned that the probation officer had not been subjected to any disciplinary measures. Ms Cardinal considered Mr. Robert’s failure to discipline Mr. Seguin another example of preferential treatment by the Cornwall Area Manager. Ron Gendron, another probation officer in the Cornwall office, expressed similar sentiments. He and his co-workers discussed the Varley incident, which they considered extremely inappropriate conduct on the part of a probation officer. As Mr. Gendron said, it was “irresponsible” behaviour and a “flagrant violation.” Ron Gendron also

believed that Mr. Seguin was not disciplined for his conduct because he was favoured by Area Manager Emile Robert: there was a “clear violation of rules”; Mr. Seguin was “breaking a conflict of interest rule that the manager knew about ... Emile Robert knew that,” but “there were no consequences.” This was echoed by Mr. van Diepen, who did not think that Mr. Robert gave Mr. Seguin’s involvement in the Varley incident and the breach of Ministry standards the serious attention that it warranted.

Varley Incident Not Reflected in Performance Appraisals of Ken Seguin and Emile Robert

The Area Manager of the Cornwall Probation Office made no reference to the Varley incident in the performance appraisal of Mr. Seguin. In his evaluation of Mr. Seguin for the period July 1991–June 1992, Mr. Robert did not mention the violation by the probation officer of Ministry standards and his inappropriate behaviour in the Varley incident. On the contrary, Mr. Robert wrote, “Mr. Seguin is a very good employee. He has demonstrated a high level of initiative and proficiency in his work.” Again in Mr. Seguin’s performance appraisal for July 1992–June 1993, there is no mention of the Varley incident or the letter of counsel sent by Mr. Robert to Mr. Seguin in November 1992. And again Mr. Robert writes, “Mr. Seguin is a dedicated employee. He shows initiative and proficiency in his work. I am pleased with his work performance.” Mr. Robert could not explain, when asked at the hearings, why he did not include the letter of counsel in Mr. Seguin’s performance review: “Je pourrais pas vous expliquer pourquoi je l’ai pas mis dans son rapport d’évaluation.” When questioned further, Mr. Robert acknowledged that it was not his practice to include in the performance evaluation disciplinary measures imposed on an employee.

Regional Manager Roy Hawkins testified that he never saw a negative personal evaluation report of Mr. Seguin. It was Mr. Hawkins’ practice to initial the evaluation reports of the probation officers in the Cornwall office. Mr. Hawkins testified that he expected Mr. Robert to include the letter of counsel in Mr. Seguin’s evaluation report. Mr. Hawkins said that if he was concerned that a matter was not referred to in the evaluation report, it was his practice to communicate this to the Area Manager in writing. However, Mr. Hawkins had no recollection of directing Mr. Robert to include the Varley matter and the letter of counsel in Mr. Seguin’s performance appraisal:

If I did have a concern about something that had taken place that I was aware of that should be included within the document, I would communicate that back to the area manager in writing.

I don't recall ever specifically directing an area manager to put something in a report, but it is something that I would expect to be in the report, the evaluation report, in the subsequent year that the letter of counsel had been sent with regard to whatever the matter had been. That would normally be procedure.

Mr. Hawkins testified that although he was aware of the Varley incident in September 1992, he did not see the July 1992–June 1993 appraisal as it was not initialled by him.

Ms Newman was also of the view that the Varley incident should have been included in the performance evaluation. I agree. It was incumbent on the Area Manager to include this information in Mr. Seguin's performance appraisal. It was important that such evaluations clearly reflect the breaches of Ministry standards, the fraternization with Ministry clients, the serving of alcohol, and the inappropriate behaviour by probation officer Mr. Seguin.

Despite Mr. Hawkins' "outrage" at the Varley incident and Mr. Robert's poor handling of the situation, Mr. Hawkins himself did not reflect his concerns in Mr. Robert's evaluation report. In the February 26, 1993, evaluation signed by Mr. Hawkins, the Regional Manager writes:

Mr. Robert has been an Area Manager for nearly eight years in Cornwall and has made a significant contribution in providing stability and direction to staff in that area. The major achievement in this past year locally has been the restructuring of contract services. At the provincial level he has made a major contribution to the employment systems review. Attendance has been excellent with a minimal number of credits used.

As Mr. Hawkins acknowledged in this evidence, this is a positive statement about Emile Robert's performance. This evaluation was signed by Mr. Hawkins three weeks after he received correspondence from Mr. Robert that a letter of counsel had been sent to Mr. Seguin. Yet Mr. Hawkins did not include any comments about the manner in which Mr. Robert had handled the Varley incident: that Mr. Robert did not notify him until eight months had passed, that Mr. Robert had not adequately investigated the incident, and that Mr. Hawkins thought that the letter of counsel was an inappropriate response in the circumstances. Mr. Hawkins had "a number of concerns" about Mr. Robert's competence as a manager and he thought that Mr. Robert handled the Varley situation very poorly, yet none of this is reflected in Mr. Robert's performance appraisal. As Mr. Hawkins conceded, "[T]here isn't any reference to the letter of counsel at all in this," and there is no sense of outrage.

Mr. Hawkins agreed that he could have specified in Mr. Robert's evaluation that these areas required improvement. In my view, Mr. Hawkins should have delineated his concerns about Mr. Robert's competence as a manager as well as his poor handling of the Varley incident in Mr. Robert's performance appraisal. This would have ensured that regional managers who succeeded Mr. Hawkins, as well as other officials at the Ministry of Correctional Services, were apprised of and had access to this important information.

A problem that emerged is that because these Ministry violations and poor management practices were not reflected in the performance appraisals of the probation officer and the area manager, supervisors and area managers who succeeded Roy Hawkins and Emile Robert and other Ministry officials might not have been aware of such matters as the Varley incident.

In my view, Mr. Emile Robert failed to adequately supervise Mr. Ken Seguin and to ensure that the Ministry conflict of interest policies were adhered to. Mr. Robert also failed to sufficiently discipline Mr. Seguin with respect to his inappropriate contacts with Ministry clients and his omission of critical information in the incident report regarding the presence of alcohol. The Ministry of Correctional Services also failed to ensure proper management of the Cornwall Probation Office and failed to thoroughly investigate deficient management practices in relation to the conduct of Mr. Seguin. The Ministry, through its employees, knew or should have known of Mr. Seguin's inappropriate contacts with Ministry clients, which contravened Ministry policies and ethical principles applicable to probation and parole officers. Also, the Ministry and its employees failed to impose discipline on Mr. Emile Robert with respect to the Cornwall Area Manager's deficient management practices regarding Mr. Ken Seguin.

***Deborah Newman Sends a Mediator to the Cornwall Probation Office,
Emile Robert Is Subsequently Transferred to Ottawa***

Mr. Hawkins remained the Regional Manager of the Cornwall office until 1993.

Bill Roy, the Regional Manager who succeeded Roy Hawkins,²¹ noticed the tension between Mr. Robert and his staff: the "snickering" and "sarcasm." He, too, observed that the relationship between Mr. van Diepen and Mr. Robert was very strained. In his opinion, Mr. van Diepen undermined Mr. Robert's authority. The relationship between Mr. Robert and his staff concerned Bill Roy and he discussed these issues with the Cornwall Area Manager. However, the problems persisted. As Mr. Roy said, "It was sort of like there all the time." The situation did not improve.

21. From 1993 to 1997, Bill Roy was the Regional Manager of the Eastern Office in Kingston.

Mr. Robert conceded that there were difficulties with staff and morale, but he attributed most of these problems, particularly before Mr. Seguin's death, to his absence from the Cornwall Probation Office. Beginning in 1991, Mr. Robert was involved in the employment systems review, a Ministry project. Mr. Robert travelled to Toronto, and for about two years, he was seldom in the Cornwall Probation Office.

Throughout the 1990s, the relationship between Emile Robert and his staff deteriorated. The tension and acrimony between the Cornwall Area Manager and his staff escalated during the 1996 Ontario Public Service Employees Union (OPSEU) strike. Mr. Robert testified that on a cold day during the strike, he brought coffee to the employees on the picket line. Carole Cardinal, he said, blocked his access to the office and Mr. Robert called the police. On another day when he arrived at the office at about 7:00 a.m., approximately fifty people were picketing, some of whom were wearing balaclavas. Fluid had been injected into the locks of the doors, which prevented Mr. Robert from entering his office. Administrative assistant Louise Quinn recalled this incident during her testimony. On another occasion, when Mr. Robert was on a conference call, strikers tied a rope from his door handle and attached it to another door, which prevented Mr. Robert from leaving his office. These were only some of the incidents experienced by the Area Manager during the 1996 OPSEU strike.

In 1996, Deborah Newman became responsible for the Cornwall Probation Office in her position at the Ministry as District Administrator. Mr. Robert reported directly to Ms Newman. In that year, after the public service strike, she visited the Cornwall office and interviewed each employee: probation officers as well as administrative assistants. It was apparent to her that "there were very poor workplace relationships between the area manager, Emile Robert, and the staff of the Cornwall Probation and Parole Office."

The purpose of the interviews was to identify specific problems in the Cornwall office. Staff expressed the following concerns regarding Mr. Robert:

1. Differential treatment—different standards for different staff
2. Poor interpersonal skills
3. Personal sensitivity and defensiveness
4. Tendency not to accept responsibility and to blame others
5. Staff felt undervalued and not appreciated.

It was evident to Ms Newman that the relationship between the Cornwall Area Manager and his staff had been seriously affected during the public service strike; it "had long-lasting effects in terms of the damage done to relationships." Ms Newman testified that in the 1996 interviews, none of the staff raised with her

any issue with regard to allegations of abuse involving either Nelson Barque or Ken Seguin. The discussions were focused on the Area Manager, Mr. Robert.

Ms Newman transferred Mr. Robert in 1997 for a six-month period to the Rideau Correctional and Treatment Centre. She wanted to expose Mr. Robert to other models of management and help him to develop skills in interacting with employees. Mr. Robert had expressed to Ms Newman an interest in an assignment in Ottawa.

Ms Newman completed a performance appraisal for Mr. Robert in 1997. Although the review was on the whole favourable, Mr. Robert received a below-average rating, two out of five, under “Achieving People Strength.” The review describes the working relationships and the low morale in the Cornwall office:

There is a relatively lengthy history of a difficult working relationship between Mr. Robert and the probation officers in the Cornwall office. The staff have raised their concerns with the District office, indicating that working relationships are strained between them and their area manager. This results in poor morale in the work environment. While it is clear that there are some complex dynamics involved, including some difficult to manage staff, there is room for a more flexible approach to some issues. It is likely that this would yield positive results while still holding staff accountable for their performance and compliance with policies and procedures.

It has been agreed that the District Administrator will assist in the resolution of key business issues of concern in the office and that a mediator will be appointed to assist in resolving the working relationship issues. Mr. Robert is encouraged to consult with the District Office on staff relations issues.

When he testified at the Inquiry, Mr. Robert assumed some responsibility for the poor morale in the Cornwall office: “[J]e prenais responsabilité de ma part. Oui, j’étais rigide, puis dans une relation, lorsqu’elle était devenue très difficile, je suis devenue très rigide.”

In the 1997 performance appraisal signed by Ms Newman, the following comment is made with regard to case audits:

While the audits are meticulous and convey a very high standard in auditing, the probation staff find them to be intimidating and somewhat overwhelming. Their experience of the process is negative and they do not feel that there is sufficient positive recognition afforded through this audit tool.

Ms Newman thought a mediator might be of assistance in resolving some of the tensions between the Cornwall Area Manager and his employees. She approached both Mr. Robert and the staff and they were receptive to this suggestion. Ms Newman subsequently engaged the services of Roger Newell, a staff development officer at the Ministry training centre who was skilled in mediation.

Mr. Newell had meetings with staff from the Cornwall office in early 1998. In a document entitled “Tangible Issues and Concerns Raised by Staff About the Manager,” Mr. Newell delineated some of the problems discussed by probation employees. They included:

Low Morale

The following is a list of problem areas identified by staff. With respect to management and management style:

1. Not a team player
2. Promotes dissension
3. Lack of staff support
4. Double standards
5. Delegation of duties
6. Lack of appreciation
7. Poor communication skills
8. Attitude towards POAO
9. Personality issues.

Ms Newman agreed at the Inquiry hearings that the poor relationship between Mr. Robert and his staff and the “dysfunctional work environment” could inhibit employees from reporting important information to their Area Manager.

After Mr. Robert returned to the Cornwall office and the mediation process had taken place, it was evident to Ms Newman that “the damage was irreparable.” Mr. Robert was transferred from the Cornwall Probation Office. As Ms Newman testified:

... [U]ltimately when this mediation concluded it became evident to me that that had not repaired the damage done to the relationship. Essentially the damage was irreparable. Despite the best efforts of all of the parties in mediation it was not successful.

And so it was at that point in time that I engaged Mr. Robert in a transfer to the Ottawa—one of the Ottawa Probation and Parole offices under close supervision.

In late 1998, Mr. Robert left the Cornwall office for Ottawa.

The Establishment of the Independent Investigations Unit in 1992

As a result of complaints of sexual harassment by female employees who attended the Ministry of Correctional Services Bell Cairn Training Centre in Hamilton, as well as complaints from other Ministry employees, the Independent Investigations Unit (IIU) was established in 1992. Corrections officials were of the view that a separate unit should be created within the Ministry to investigate complaints of sexual improprieties and harassment. Until that time, the Management Board Secretariat had been responsible for such complaints throughout the Ontario government.

The first manager of the IIU was Gwen Boniface. Lenna Bradburn assumed this position in September 1993 and remained manager of the IIU until December 1994. The Deputy Minister at that time was Michele Noble and the Assistant Deputy Minister was Don Evans. When Ms Bradburn became the manager of the IIU in 1993, there were approximately four to six investigators and one administrative support person.

The 1992 terms of reference make it clear that the IIU is independent. Under “purpose,” it states:

To demonstrate its genuine commitment to zero tolerance with respect to workplace discrimination and workplace harassment, the Ministry of Correctional Services is establishing a separate unit to provide a neutral, independent, and specialized investigatory capacity.

It is stipulated in the terms of reference that “none of the investigators” of the IIU “will be chosen from existing employees of the Ministry of Correctional Services.” Lenna Bradburn testified that the Ministry was committed to the principle of the independence of the IIU. The intent, she said, was for the IIU to be independent from both management and the union.

The IIU was required to investigate all complaints of workplace discrimination, workplace harassment, and all complaints of sexual impropriety alleged to have been committed by employees of the Ministry toward offenders within its responsibility. The terms of reference stated:

This Unit *will* investigate the following:

- All complaints of workplace discrimination alleged to have been committed by employees of the Ministry of Correctional Services;
- All complaints of workplace harassment alleged to have been committed by employees of the Ministry of Correctional Services; and

- *All complaints of sexual impropriety alleged to have been committed by employees of the Ministry of Correctional Services towards offenders who come within the responsibility of the Ministry.* (Emphasis added)

The “scope” provision in the terms of reference reiterated that the IIU was required to investigate all allegations of sexual impropriety, which included both gestures and oral and written remarks. These behaviours were merely examples and were not exhaustive of the acts that fell within the ambit of sexual impropriety:

The unit will investigate all allegations of workplace discrimination or harassment. *The unit will also investigate any allegations of sexual impropriety (including gestures, oral or written remarks, etc.) by employees towards others, including offenders. The unit will be expected to give primary focus to any allegations of a sexual nature, and to reprisals of any sort.* (Emphasis added)

Ms Bradburn understood that sexual impropriety clearly fell within the responsibility of the IIU, and that the IIU terms of reference mandated investigation in such cases. However, since its establishment, the IIU had essentially investigated complaints of workplace harassment and workplace discrimination. As Ms Bradburn said at the hearings, “over 99 percent” of the work of the IIU dealt with workplace harassment and workplace discrimination from employees of the Ministry. And, Ms Bradburn added, until she received a call concerning an allegation by David Silmsner of sexual impropriety, “I personally don’t recall any other sexual impropriety” case.

Ms Bradburn explained that when a complaint was received, the IIU would determine whether it fell within its mandate: “[I]t didn’t mean that just because everything came in the door, it would get investigated.”

The IIU was required, pursuant to the terms of reference, to notify the police of allegations of sexual assault or other serious criminal acts:

If, at any time during the course of an investigation, the investigators uncover allegations of sexual assault or any other serious criminal activity, they shall determine whether the manager has notified the police, and, if not, the unit shall notify the police pursuant to the ministry’s protocol for contacting police.

Ms Bradburn explained that the IIU would often pursue its own investigation even in circumstances in which it had notified the police. This would occur as long

as the IIU did not jeopardize the police investigation or a criminal prosecution. As the manager of the IIU said, “We would be guided by the police or Crown Attorneys with respect to proceeding.”

The following duties and responsibilities of the IIU were also delineated in the terms of reference:

... [T]he Unit will:

- receive and investigate all complaints of workplace harassment or discrimination;
- immediately inform all involved parties that the complaint is under investigation and of the investigation process;
- develop an investigation plan with respect to each complaint;
- except as required to conduct the investigation, maintain confidentiality of the allegations and the investigation;
- maintain documents in a confidential filing system;
- report in writing to the Deputy Ministers summarizing the results of the investigation, including an analysis of the evidence and the conclusions of the investigator, within 60 days of receiving the complaint
 - if the individual was suspended from duty pending the investigation, every attempt should be made to provide a preliminary report to the Deputy Ministers as soon as possible, and in any event, within five business days
 - the individual under investigation will be expected to make himself or herself available to the Unit’s investigators;
- if, during the course of the investigation, the investigator forms the opinion that intermediate remedial measures should be taken before the conclusion of the investigation, the Deputy Ministers shall be advised immediately in writing ...

The terms of reference also stated that the IIU investigator “shall have access to all ministry staff and records for purposes of conducting an investigation.” Moreover, all employees and persons connected with the Ministry of Correctional Services were required to “assist and cooperate with the investigators to the fullest extent” to enable the investigators to discharge their duties and responsibilities pursuant to the terms of reference. The investigators in the IIU were designated by the Minister under section 22 of the *Ministry of Correctional Services Act*. The IIU investigators had legal powers to execute their duties.

It is important to note that the terms of reference of the IIU did not require that a complaint be made in writing. Ms Bradburn acknowledged that a written complaint was not required to initiate an IIU investigation.

The IIU had a dual reporting relationship. It reported to the Deputy Minister of Correctional Services and to the Deputy Minister of Management Board Secretariat. This was attributable to the fact that although the Deputy Minister of Management Board Secretariat was responsible for workplace harassment and discrimination throughout the Ontario government, the Ministry of Correctional Services had established its own unit to investigate such complaints.

Lenna Bradburn, as manager of the IIU, reported to the Deputy Minister of Correctional Services who, as mentioned, was at that time Michele Noble. Ms Bradburn reported to the Deputy Minister on administrative matters such as the budget, staffing, and resources required by the IIU. In terms of IIU investigations, the Unit generally had contact with the Deputy Minister's Office at the conclusion of its investigation, after the IIU had forwarded its report and recommendations to the Deputy Minister. The Deputy Minister would then decide the appropriate course of action, including whether to implement recommendations put forth in the IIU report such as disciplinary measures. As Ms Bradburn explained, the IIU did not "actually apply discipline to employees or take any kind of action against employees that were found to have substantiated complaints."

Loretta Eley, executive assistant to the Deputy Minister at that time, agreed that it was the IIU's responsibility to assess whether the complaint fell within its mandate and to determine whether it would conduct an investigation. Once the investigation was completed, the IIU was to forward its report to the Deputy Minister. Any follow-up in terms of discipline or other actions fell under the authority of the Deputy Minister of Correctional Services.

When Ms Bradburn became manager of the IIU, one of her responsibilities was to implement operating procedures for the Unit. She also managed the workflow at the IIU and assigned cases to the investigators. A "hotelling" concept was implemented; investigators worked from their home offices and travelled periodically to the IIU office to collect and return files. The IIU dealt with approximately 200 files a year with a sixty-day turnaround time during Ms Bradburn's tenure as manager.

Nowhere in the 1992 terms of reference does it state that the IIU will not conduct an investigation of sexual impropriety if a complaint is made concerning a deceased or former employee of the Ministry. When David Silmsier complained to the Ministry of Correctional Services that his former probation officer, Mr. Ken Seguin, had committed acts of sexual impropriety, the alleged perpetrator was no longer alive. Lenna Bradburn was manager of the IIU at the time when Mr. Silmsier contacted the Ministry.

Regional Manager Receives a Call From David Silmsers: Allegations of Sexual Abuse by a Former Probation Officer at the Cornwall Office

When Bill Roy, Regional Manager (Eastern Region), was on the telephone in Kingston in the late afternoon of December 15, 1993, his secretary and the Youth Services Coordinator walked into his office in a visibly anxious state. They gestured to Mr. Roy to conclude his call and handed him a note that said he needed to respond immediately to someone on the phone. When Mr. Roy read the note and saw their reactions, he ended his call.

The Ministry staff told Mr. Roy that a man, waiting on the telephone, had alleged that he had been abused as a probationer by a probation officer who had recently committed suicide. The caller, Mr. Roy was told, was very agitated. Mr. Roy's secretary explained that as soon as she realized the seriousness of the call, she connected this man with the Youth Services Coordinator because of his reference to probation and to abuse when he was a child. The Youth Services Coordinator did not feel comfortable taking the call and urged Mr. Roy to speak with the man directly. This was highly irregular. Regional managers, Mr. Roy testified, rarely speak directly to clients.

The male caller disclosed to Mr. Roy that he had been abused by Ken Seguin, his former probation officer. He said that he had a deal worked out with Mr. Seguin for a sum of money, but the "son of a bitch killed himself." Mr. Roy became upset and said that he did not wish to discuss the problem in this manner. According to Mr. Roy, David Silmsers responded, "Well, that's just the way it is and ... if I can't get it from him I'll get it from you."

Mr. Roy "started to get worked up." In the approximately twenty-five years that he had worked at the Ministry of Correctional Services, he never had been confronted with a situation such as this. The Regional Manager made it clear to the caller that he was "not inclined to write any cheques" but that he would follow up on this if the caller could provide his full name and telephone number. David Silmsers conveyed this information.

Mr. Roy told Mr. Silmsers that he would follow the Ministry procedures for issues of this nature. He explained that he would contact the Independent Investigations Unit, which was responsible for these types of complaints. He assured David Silmsers that the Ministry would "take it very seriously."

The conversation did not end at that point. Mr. Silmsers said he needed support and counselling and added, "I'm not the only one" or "there are more of us." It was at this point that the Regional Manager realized that there could be other victims. Mr. Silmsers, in an agitated state, said there was a service or centre for abused victims and family members. It was evident that Mr. Silmsers felt he needed counselling for the sexual abuse that had allegedly been committed on him in his youth by his probation officer.

David Silmsers told Mr. Roy that he had already notified the Cornwall Police Service (CPS) about the sexual abuse committed by Ken Seguin. But, he continued, the police, “were jerking me around” so he decided to tell them to “drop the investigation.” He mentioned that he had told the police that he had retained a lawyer and that he intended to pursue the matter civilly. The investigation of the Silmsers complaint by the Cornwall Police Service is discussed in detail in the following chapter of this Report.

The beginning of the conversation with David Silmsers had been fairly heated, but by the end of the call, Mr. Silmsers had settled down and was “mellow.” Mr. Roy realized that he himself had “got hot fast because of his [David Silmsers’s] threats with the money.” Mr. Roy testified that he “really did take” the matter “seriously” and that he had tried to convey this to Mr. Silmsers. Mr. Roy concluded the call with the assurance that he:

... would be passing this on to the team ... to the office that would investigate it, and failing that, because of how I guess I had behaved I said, “I’ll phone you back.” I didn’t want to lose him.

Mr. Roy was surprised that David Silmsers had contacted his office in Kingston. As the Regional Manager acknowledged, “I guess he was reaching out for something.”

Bill Roy had been the Regional Manager for about four months when he received the call from David Silmsers. The Cornwall Probation and Parole Office was one of six offices supervised by Mr. Roy.

Bill Roy Contacts the IIU, the Deputy Minister’s Office, and the Police

After receiving the December 15, 1993, telephone call from David Silmsers, Mr. Roy contacted a number of Ministry officials. The first call he made was to the Independent Investigations Unit, to Manager Lenna Bradburn. Mr. Roy knew that the IIU investigated complaints of sexual improprieties or misconduct and that he should contact this Unit. He believed he was following Ministry policy by reporting the call from David Silmsers to the IIU.

On December 16, 1993, Mr. Roy spoke to Ms Bradburn. He reported that he had received a call from a person who alleged he had been sexually abused by his probation officer, Ken Seguin, who was a former Ministry employee. This probation officer, Ms Bradburn learned, had committed suicide three weeks earlier. Mr. Roy advised the IIU manager that the alleged victim, a young offender at the time of the abuse, “had been privately seeking restitution through his lawyer from the deceased party.” When Ms Bradburn received this call in December 1993, it was the first time she had encountered a complaint of this nature.

On the same day, Mr. Roy also contacted the CPS and the Ontario Provincial Police (OPP) to report the complaint from David Silmser. Mr. Roy spoke with Staff Sergeant Luc Brunet, head of the Criminal Investigation Branch at the Cornwall Police Service, regarding Mr. Silmser's allegations of sexual abuse by Ken Seguin. The police force, Mr. Roy learned, was well aware of these allegations, which had been the subject of investigation. But Staff Sergeant Brunet relayed that the police investigation had been stopped at the request of the complainant. Staff Sergeant Brunet said the Cornwall police were upset at Mr. Silmser's "change of heart" but that it was police policy, in such circumstances, to discontinue the investigation. As mentioned, details of the CPS investigation of Mr. Silmser's allegations of historical sexual abuse are discussed in detail in Chapter 6, on the institutional response of the Cornwall Police Service.

Bill Roy also contacted the OPP Lancaster Detachment. The officer to whom he spoke said that the OPP was aware of the Silmser allegations against probation officer Ken Seguin, that he had been dealing with David Silmser for some time, and words to the effect that Mr. Silmser was "not reliable." When Paul Downing interviewed Bill Roy about the Silmser complaint several years later, in 2000, Mr. Roy told the Special Investigator that the OPP officer's comments "caught him off guard."

Mr. Roy was surprised to learn that both the CPS and the OPP were aware of David Silmser's allegations against one of his former employees but that neither he nor other Ministry officials had been contacted regarding this complaint of sexual impropriety. As I recommended earlier in this chapter, in the discussion of probation officer Nelson Barque, it is essential that the police and the Ministry of Community Safety and Correctional Services develop a protocol to share such information.

On December 17, 1993, a call took place between Bill Roy's office and David Silmser. Mr. Silmser was very upset as he had expected the Ministry to contact him after his call with Mr. Roy. Mr. Silmser threatened to contact the *Ottawa Citizen* newspaper and to sue the Ministry of Correctional Services for a half million dollars if the Ministry did not promptly address his complaint.

Mr. Roy contacted Loretta Eley, the executive assistant to the Deputy Minister, to alert her to the Silmser allegations. Ms Eley learned that a former probationer had alleged that he had been sexually abused by Ken Seguin, his probation officer. Ms Eley was also told that Mr. Silmser had been "negotiating a civil remedy" with Mr. Seguin before his death and that he was worried he would not receive his compensation. She also learned that he was threatening to contact the media and to launch a lawsuit against the Ministry if it did not respond to his complaint.

Ms Eley testified that Mr. Roy did not discuss Mr. Silmser's request for counselling and support for himself and others who had been sexually molested.

Ms Eley claimed that had she been privy to this information, she would have referred Mr. Silmsers to resources in the community:

... I would have responded to it ... [W]e have resources that we can refer people to, and the fact that he was no longer a client, if he's calling us asking for help then we would certainly refer him to community resources.

Ms Eley considered this a serious matter. This was also the first time Ms Eley had encountered an allegation of sexual improprieties on a probationer by a Ministry employee.

December 17, 1993

Discussions Between the IIU Manager and the Deputy Minister's Office:

No Action Required of the IIU at This Time, Legal Branch Will Take the Lead

A conversation took place between Lenna Bradburn, manager of the IIU, and Loretta Eley, executive assistant to the Deputy Minister, on December 17, 1993. The two senior Ministry officials discussed the Silmsers complaint and the contact made by both Bill Roy and Ms Bradburn with the OPP and the CPS. The police had indicated that Mr. Silmsers was not interested in pursuing the matter criminally but rather was focused on obtaining a civil remedy.

According to the notes of Ms Bradburn, Ms Eley "advised Legal Branch would lead and there was no action required of IIU at this time." Ms Bradburn testified that Ms Eley was not instructing her but rather that it was their "shared view" that the Legal Branch of the Ministry would "take the lead" on this issue, given the references to the alleged criminal activity and the financial settlement. Ms Bradburn testified that it was her decision alone, as manager of the IIU, that "there was no action required of IIU at this time."

Ms Eley claimed Ms Bradburn's note that the "Legal Branch would lead" was an inaccurate reflection of their exchange on December 17, 1993. The Deputy Minister's executive assistant contended that she was simply communicating to the IIU manager that she would alert the Legal Branch to the Silmsers complaint in case the Ministry was sued. It was simply a "courtesy" to the Legal Branch.

The IIU Learns That Other Victims May Be Involved

In the mid-afternoon of December 17, 1993, Lenna Bradburn spoke to Bill Roy. The allegations by Silmsers were discussed as well as the police contact. Inscribed in Ms Bradburn's notes are the following statements:

- Silmser has suggested that the ministry should be offering counselling to him and others like him
- draws parallel with Grandview.

Clearly, the manager of the IIU knew that David Silmsers was asking the Ministry for counselling for the sexual abuse he had suffered from his probation officer, Ken Seguin. It is also evident from Ms Bradburn's notes that Mr. Silmsers disclosed that there were other victims of sexual abuse, who should also be offered counselling by the Ministry of Correctional Services.

Bill Roy's Last Communication With David Silmsers

Bill Roy contacted David Silmsers by telephone in the late afternoon of December 17, 1993. Mr. Silmsers told the Regional Manager that he was not an "asshole" sitting by the phone, and he again threatened to contact the *Ottawa Citizen* if the Ministry did not deal with his complaint in an expeditious manner. Mr. Silmsers said he was not surprised that he had not heard from a Ministry investigator and added that this was precisely the way he had been treated by the police. The delays and problems in the CPS investigation of the Silmsers complaint are discussed in Chapter 6. Mr. Silmsers made it clear to Mr. Roy that there was no point in phoning him again and that he expected an investigator from the Ministry to contact him. Mr. Roy left a record of this call on Lenna Bradburn's voicemail.

This call on December 17, 1993, was the last contact Mr. Roy had with David Silmsers. Unfortunately, despite Ms Bradburn's request that Mr. Roy follow up with Mr. Silmsers's complaint, the Regional Manager did not do so. Neither did Ms Bradburn or her staff in the IIU contact Mr. Silmsers or investigate his complaint, despite the mandatory language in the IIU's terms of reference, that an investigation must be conducted for all allegations of sexual improprieties.

Decision Silmsers Must Lodge His Complaint in Writing: Failure of the IIU to Investigate the Complaint

Despite the fact that there was no such requirement in the IIU terms of reference, a decision was made that the Silmsers complaint should be made in writing before an investigation of the alleged sexual impropriety could be undertaken. After discussions between Loretta Eley and Lenna Bradburn, it was decided that Mr. Silmsers would be asked to forward his complaint in writing to the Deputy Minister's Office if he wished to pursue his allegation of sexual abuse by his former probation officer. A decision was also made that Mr. Roy was the appropriate Ministry official to communicate this request to David Silmsers.

In a memo to Loretta Eley on December 22, 1993, Ms Bradburn writes:

I wish to take this opportunity to advise you of the action which has been taken regarding concerns raised by Mr. Silmsers.

As you are aware, Mr. Silmsers is a former probation client who has alleged that a probation officer, now deceased, sexually assaulted him some twenty years ago. Mr. Silmsers has recently contacted Bill Roy, Eastern Region, advising Bill that he had been seeking a private civil remedy with the probation officer prior to his apparent suicide.

I have spoken to Staff Sergeant Luke Brue [Luc Brunet], Cornwall City Police, and Constable Randy Miller [Millar], Lancaster OPP, who were both unable to provide any information which would substantiate Mr. Silmsers's allegations against the deceased probation officer.

As a result of our conversation on December 20, 1993, I spoke to Bill Roy this date requesting he contact Mr. Silmsers to advise him that if he wished to pursue his allegation with the Ministry, to forward his complaint to the Deputy Minister's Office. Bill indicated that he would try to contact Mr. Silmsers by telephone, with follow-up correspondence.

If you have any questions regarding the above, please do not hesitate to contact me.

Several important questions arise. Why was it decided that the Silmsers complaint must be in writing? Why was the complaint to be forwarded to the Deputy Minister's Office? Why did the IIU not investigate this matter as mandated in its terms of reference? And why did the Ministry not make further contact with David Silmsers after this decision was made? Although this memo states that Ms Bradburn asked Bill Roy to contact Mr. Silmsers to convey the information that a written complaint must be sent to the Deputy Minister's Office, no such communication between the Ministry of Correctional Services and David Silmsers took place.

A fundamental question is why the decision was made that the complaint must be in writing before an IIU investigation would take place. Ms Bradburn agreed in her evidence that a written complaint was not required in the IIU terms of reference. It had simply, she said, been a practice for complaints of workplace discrimination and harassment received by the IIU in the past to be submitted in writing. But this had merely been a practice, and importantly, this was a complaint

of sexual impropriety by a former probationer, not a complaint of workplace harassment. Ms Bradburn agreed that probationers are in a vulnerable position with regard to the probation officers who supervise and exercise authority over them. But the manager of the IIU gave no thought at that time to the fact that requiring a complaint in writing might have created an obstacle for David Silmser to pursue his complaint with the Ministry.

Loretta Eley, executive assistant to the Deputy Minister, also agreed that policy did not require that complaints be submitted to the Ministry in writing: “[I]t’s not in our policy anywhere that you must put your complaints in writing.” Nor did Ms Eley consider that this requirement might prevent David Silmser from pursuing his complaint with Correctional Services.

Both Ms Bradburn and Ms Eley were also asked at the hearings why a written complaint was to be sent to the Deputy Minister’s Office. According to the IIU terms of reference, complaints of sexual impropriety clearly fell within the responsibility of the Unit. Ms Bradburn claimed that it was because there had been criminal allegations, the police were aware of Mr. Silmser’s complaint, there was mention of the involvement of a lawyer, and there had been a reference to Grandview, with the “inference” that a “financial settlement” was sought. But the manager of the IIU agreed that complaints of sexual impropriety alleged to have been committed by Ministry employees fell squarely within the mandate and responsibility of the IIU. When asked why she was conferring with the Deputy Minister’s Office and making decisions with Loretta Eley, Ms Bradburn explained that she had become manager of the IIU only two months before Mr. Silmser made his complaint and she thought she should consult the Deputy Minister’s Office.

To Ms Eley, “it seemed very reasonable” for Ms Bradburn to instruct Bill Roy to contact David Silmser and ask him to submit his complaint in writing before it was decided whether an IIU investigation would be undertaken. When asked why the executive assistant to the Deputy Minister was involved in this discussion about an IIU investigation, Ms Eley responded, “probably because I was new and didn’t know any better.”

To compound the problem, the Regional Manager at the Ministry did not contact David Silmser to inform him of the added necessity of filing a written complaint. Lenna Bradburn had directed Mr. Roy to telephone Mr. Silmser to ask him “to put his complaint in writing to the Deputy Minister in detail.” But Mr. Roy was of the view that a “further call” from him “would be less than useful” and suggested that he should instead send Mr. Silmser written correspondence. Unfortunately, however, Mr. Roy never sent David Silmser the written correspondence. He testified that there were two reasons for this decision: (1) after reviewing the matter with his superior, Mr. J. O’Brien (Regional Director, Eastern

Region), they “decided to not write until a letter could be written by K. Hogg,” a lawyer at the Ministry; and (2) Mr. Roy claimed that he did not know David Silmsner’s address.

These explanations are not convincing. As Mr. Roy acknowledged, he knew David Silmsner’s full name and his phone number, and it would not have been very difficult to find his address. This was not attempted, nor did Mr. Roy follow up with the Legal Branch at the Ministry to determine whether they had corresponded with Mr. Silmsner. Mr. Roy claimed that he had planned, in accordance with Ms Bradburn’s request, to send a letter to Mr. Silmsner to ask that a written complaint be sent to the Deputy Minister’s Office. But this never occurred.

Lenna Bradburn testified that she was surprised that David Silmsner had not been asked to put his complaint in writing. She expected “the information would be communicated to Mr. Silmsner.” The IIU manager agreed there was a lack of communication, a gap in terms of how the Ministry dealt with Mr. Silmsner’s complaint. There was also no follow-up by Ms Bradburn or her staff in the IIU to determine whether Mr. Silmsner had received this information.

Mr. Roy testified that when he reported the Silmsner complaint to Ms Bradburn at the IIU, he expected the Unit to investigate the allegations. Mr. Roy claimed that he had some “misgivings” about requiring David Silmsner to put his complaint in writing: “It’s indicating to an alleged victim that he didn’t complain correctly.” And Mr. Roy added, “[P]utting another hoop in front of someone who’s already complained about being abused wasn’t exactly something I wanted to do ... I did think it was a little cumbersome ... [Y]ou’re going to add another layer ... [T]his [complaint] has already been registered.” Mr. Roy also questioned whether he was the appropriate person in the Ministry to repeatedly telephone Mr. Silmsner: “I’m re-phoning ... I’m not sure if we needed ... a regional manager to keep phoning David Silmsner the way I did.” Despite Mr. Roy’s concern that a written complaint to the Deputy Minister’s Office was “another hoop” Mr. Silmsner had to jump through, the Regional Manager did not discuss these issues or his misgivings with Lenna Bradburn. As is clear in Chapters 2 and 3 of this Report, on the impact of child abuse, victims of sexual abuse may have difficulty committing to writing the abuse they suffered as children.

Ms Deborah Newman also thought the stipulation that the complaint be made in writing was an obstacle and unnecessarily stringent:

In retrospect, certainly that’s a fairly rigid approach and I don’t see why it couldn’t, for example, have had an investigator or Mr. Roy contact Mr. Silmsner and take his complaint, write it down and forward it to the IIU.

Former Deputy Minister Morris Zbar made similar comments in his evidence. He said that the IIU could have “closed the loop and contacted” Mr. Silmsers to obtain the details of the allegations of sexual abuse by Cornwall probation officer Ken Seguin.

Bill Roy did not know that the IIU never investigated David Silmsers complaint of sexual impropriety by his probation officer. It was only when Mr. Roy received materials in late 2007 in preparation for his testimony at the Inquiry that the former Regional Manager of the Cornwall Probation Office learned that “nothing did happen” with regard to the Silmsers allegation. To his surprise, “it didn’t go any further.”

Similarly, Loretta Eley did not know the outcome of the Silmsers complaint to the Ministry of sexual improprieties committed by Cornwall probation officer Ken Seguin. After the executive assistant to the Deputy Minister received Ms Bradburn’s December 22, 1993, memo, she did not know if Mr. Roy had followed up to inform Mr. Silmsers that he was to submit a written complaint to the Deputy Minister’s Office. And as Ms Eley said about seven years later to Special Investigator Paul Downing in her 2001 interview, she did not know who made the decision that the IIU would not investigate the Silmsers complaint and had “no idea why an investigation would not have taken place.”

It is evident that Ministry of Correctional Services officials placed obstacles in the way of an investigation of Mr. Silmsers allegations of sexual abuse by his former probation officer. Moreover, the Ministry failed to follow up with Mr. Silmsers to ensure that this complaint was investigated and given the serious attention that it warranted.

Failure to Examine Ministry Files From the Cornwall Probation Office: Another Lost Opportunity

Lenna Bradburn, manager of the IIU, testified that there was no investigation of the Silmsers allegation in late 1993 that he and others had been sexually abused by a probation officer from the Cornwall Probation Office. Nor was any counselling offered to David Silmsers or other potential victims. Had an IIU inspector interviewed Mr. Silmsers, and had the files of probation officers at the Cornwall office been examined, a pattern of irregularities and improprieties would have emerged.

Ms Bradburn was not aware that in 1989, Ministry officials knew Ken Seguin was living with Gerald Renshaw, a former probationer, at his home in Summerstown. Nor was she informed about the Varley incident in 1992, in which four young men, one of whom was a Ministry client, visited Ken Seguin at his home. As previously discussed, Mr. Seguin supplied them with alcohol, and

following this visit, one of these young men fatally shot another member of the group. Ms Bradburn also did not know that Nelson Barque, another probation officer, had left the Ministry as a result of allegations of sexual involvement with probationers under his supervision. The IIU manager did not know about these prior incidents because there was no investigation of the Silmser complaint, the probation files of the Cornwall office were not reviewed, and these events were not brought to her attention by Mr. Roy.

Mr. Roy, Regional Manager, did not take measures to ensure that David Silmser's files at the Cornwall office were examined to determine when he had been on probation and the probation officers who had supervised him. Nor were files of other probationers under Mr. Seguin's supervision examined. Mr. Silmser had told Mr. Roy in the first telephone call on December 15, 1993, that there were "others like me." He had asked Mr. Roy for counselling and support, not only for himself but for others who had similarly been subjected to sexual acts by their probation officer in Cornwall. An audit was not conducted of Ken Seguin's files to determine which probationers were under his supervision and whether they had been subjected to sexual improprieties by this Cornwall probation officer or other probation officers at that office. As Mr. Roy acknowledged at the hearings, "[I]t wasn't done." The Regional Manager added, "[I]t seems like some kind of dereliction," but "I had a lot of other stuff going on—to do I mean, that I didn't follow this particular case, no."

Nor was Loretta Eley, executive assistant to the Deputy Minister, aware of the Varley incident, or of former probationer Gerald Renshaw's living arrangements and his relationship with Mr. Seguin. Ms Eley also did not know that Cornwall probation officer Nelson Barque had sexual relationships with his probationers. When Special Investigator Paul Downing presented this information to her, which was on file at the Ministry, Ms Eley said she was not familiar with either the documents or this information. As she acknowledged to Mr. Downing, "I would like to comment that in hindsight, it would appear that the information you presented to me was not gathered and provided in a coordinated fashion to people making decisions surrounding this matter."

Ms Eley agreed that it was important for Ministry officials making decisions on the Silmser matter to have this information:

... it's a fairly long list of—quite significant issues that's presented, and I can't help but think that someone would have benefited by knowing those in making a decision.

...

... It's too bad that wasn't all known to everybody ...

...

... [I]t would be useful to have all that information when you were making a determination about what action you would take; it would be helpful to have that information.

There was no investigation of the Silmsers complaint by the IIU or by other Ministry officials. Deputy Minister Deborah Newman acknowledged that had the Ministry of Correctional Services taken steps to investigate and address the Silmsers complaint in 1993, it is possible that additional victims of abuse by probation officers in the Cornwall office would have come forward. Ms Newman thought that the Area Manager of the Cornwall Probation Office should have conducted a file review of the probationers under Ken Seguin's supervision. An investigation could have been conducted at that time by the Ministry, and information could have been shared with the police. Ms Newman agreed that had the IIU conducted an investigation in 1993 when Mr. Silmsers contacted the Ministry, had there been a discussion with staff at the Cornwall Probation Office regarding the Silmsers allegations, and had a review of Ken Seguin's files been conducted, additional victims of the probation officer might have come forward:

... [I]n 1993 ... I think it's a reasonable point that had there been further steps taken it's possible that additional victims may have come forward. So I think at the time that this occurred, in hindsight, certainly having the area manager conduct a file review of other cases under Mr. Seguin's supervision, I don't know what that would have yielded. I rather doubt he wrote about improprieties in his case notes. Nevertheless, I think it could have been an additional step taken by the Ministry at the time to have conducted that file review to see if any irregularities emerged from the file review and then to have potentially either conducted interviews or referred the matter to the police.

COUNSEL: If the IIU had investigated or if there had been discussions with colleagues or if there had been a staff meeting or if there had been follow-up of probationers, all of those steps may have resulted in more alleged victims coming forward; correct?

MS. NEWMAN: I think that's fair to say, and I think I would certainly acknowledge that, in hindsight, I think that could have been potentially helpful ...

It is clear that the Ministry of Correctional Services and its employees, including Ms Bradburn and Ms Eley, (1) failed to ensure that an investigation

of David Silmser's complaint of sexual abuse took place as mandated by the terms of reference of the IIU; or (2) contributed to the failure of the IIU to investigate Mr. Silmser's complaint of sexual abuse by his former probation officer.

Not only was there no IIU investigation of Mr. Silmser's complaint; there were no efforts made to determine whether other probationers had been sexually abused by Mr. Seguin. An examination of the probation files at the Cornwall office was not undertaken. Nor were David Silmser or other possible victims of abuse offered counselling or support to help them deal with the impact.

A House Note from the Ministry dated February 4, 1994, discusses the Silmser complaint and states that a similar complaint had been made in 1981 about another probation officer, Nelson Barque:²²

BACKGROUND:

- On December 15, 1993 the eastern regional office received a telephone call from a former male probationer who alleged that his probation officer (PO) had sexually molested him when he was 15 or 16 years old.
- On November 25, 1993 that same PO was found dead in his residence. The cause of death was determined by police as suicide by hanging.
- The complainant related to the regional manager that his lawyer had been negotiating a financial settlement with the PO's lawyer a few days prior to his death.
- The complainant further indicated there were "lots of others out there" and stated his view that supportive counselling should be provided in these matters.
- The regional manager advised that this matter would be reported to the Independent Investigation Unit (IIU). Both the IIU and appropriate police forces were notified on December 15, 1993.
- Police have subsequently confirmed that the complainant had advised them of the alleged sexual assault in the fall of 1992 and

22. House Notes are a form of briefing note. The Ministry's Information Management Unit is located in North Bay. It is responsible for accumulating information reported in the field in the form of incident reports. Incident reports are sent to the Information Management Unit, where the House Note is created. The notes are sent to the Assistant Deputy Minister's Office and reviewed by the Assistant Deputy Minister's executive assistant, signed off at the Assistant Deputy Minister Office level, and sent up to the Deputy Minister's Office. Some were reviewed at that level. Some were referred to the Minister and political staff.

they had investigated it at that time. The complainant later withdrew his allegation before any charge was laid.

- The OPP are investigating this matter and the IIU manager, although the IIU is not investigating, is coordinating the ministry's communication with the complainant.

...

- During the latter part of January, media attention focused on the actions of the church and the investigation being conducted by the Ottawa Police Force into the previous investigation by the Cornwall Police Force. The Toronto Star newspaper reported on February 3, 1994, that the OPP plan to re-open the investigation of the sex abuse complaint against the priest.
- On February 3, 1994, a member of the Cornwall probation and parole staff was interviewed by the Lancaster OPP who have re-opened their investigation into the suicide of the probation officer. The area manager will be interviewed February 10, 1994.
- In late 1981, a similar allegation was made about another probation officer in this office. The area manager, at that time, conducted a preliminary investigation and then referred the matter to the former Inspections Branch. When confronted with results of the investigation which substantiated the allegations, the probation officer voluntarily resigned.

The suggested response of the Minister in this House Note was as follows:

RESPONSE:

- All allegations of sexual assault made by a client are taken seriously by the ministry and referred to the appropriate authorities for investigation.
- This incident is currently under investigation and I am unable to comment further at this time.

There were amendments to the terms of reference of the IIU after the Silmsr complaint to the Ministry. Ms Bradburn was involved in developing the amendments, which came into effect in 1994.

It is significant that the 1994 amendments state the following for cases involving sexual improprieties: "[I]n the event that the respondent is no longer a Ministry employee, the IIU will not conduct an investigation, unless the Ministry can provide redress." An important question that arises is why the Ministry added

this clause to limit the circumstances in which a former employee would be investigated by the IIU for sexual improprieties of clients, such as probationers.

The Criminal Investigation and Security Unit (CISU), another investigative body within the Ministry, was created in 2001. The mandate of the CISU encompassed investigations of allegations of sexual impropriety but not allegations of workplace discrimination and harassment.

The IIU was disbanded in 2006. A review had previously been conducted of workplace discrimination and harassment policies by a consultant, Mr. Devlin. There was a perception by some Ministry staff that the IIU was not independent, and it was recommended in Devlin's review that the IIU be disbanded. In 2006, the Human Rights Tribunal mandated that the IIU be shut down and replaced with independent investigators for cases of workplace discrimination and harassment. The Ministry of Community Safety and Correctional Services now retains external investigators to conduct investigations of workplace discrimination and harassment complaints.

Cornwall Probation Officers Express Concerns to Ken Seguin About Socializing With Probationers

In the late 1980s or early 1990s, two probation officers in the Cornwall Probation and Parole Office decided to approach Mr. Seguin to discuss his conduct with probationers. Ron Gendron and Jos van Diepen had concerns about Mr. Seguin's social interactions with probationers and thought he was placing himself in an extremely vulnerable and risky situation.

Mr. Gendron testified that Mr. Seguin's "social interaction with clients was too commonplace." Mr. van Diepen also described the conflict of interest position in which Mr. Seguin continually placed himself. The situation had been escalating for a number of years, and the Gerald Renshaw living arrangement was a pivotal event that precipitated this discussion by these two probation officers with Mr. Seguin. In Mr. Gendron's words, "[T]he Renshaw thing, Ken living with a client, was just ripe for abuse." The Cornwall probation officer discussed some of his concerns in his evidence:

... Ken driving to ... it's great to drive a client to a treatment centre, but along the way, you're in a private vehicle with a client.

...

Everything from liability to an accident to—a client could say anything. There's no witnesses around. There's nobody to see, to hear.

... There's safety issues. What happens if the client ... before treatment decides ... these are people that have mental health issues and you're now in a vehicle with somebody. You're not equipped to deal with that sort of thing. Many things can happen. It was just something that I felt that you put yourself in that position and bad things can happen.

And so I think Mr. van Diepen and I felt that it was necessary to approach Ken, that these things—*these social interactions kept happening. He was going to get himself into some trouble.* (Emphasis added)

Both Mr. Gendron and Mr. van Diepen testified that at the time of this meeting they had no concerns Mr. Seguin was having sexual contact with Ministry clients. Mr. van Diepen had worked with Mr. Seguin at the Cornwall Probation Office since 1975, and Mr. Ron Gendron had been there since 1984.

Mr. Gendron and Mr. van Diepen were apprehensive about approaching Mr. Seguin with these issues. Mr. Seguin was a senior probation officer, he had worked in the Cornwall office for many years, and he was favoured by the Area Manager, Emile Robert. Mr. Seguin was viewed as someone close to management.

Jos van Diepen and Ron Gendron walked into Mr. Seguin's office and explained that they wanted to talk to him about some concerns. The discussion that ensued was very brief. The probation officers cautioned Mr. Seguin about his social interactions with clients and warned him that such behaviour with probationers could have adverse repercussions. Mr. Seguin did not react; he made no comment. After this meeting, Mr. Gendron did not believe that Mr. Seguin "was going to change his behaviour" with Ministry clients.

Emile Robert, the Area Manager of the Cornwall Probation Office, was well aware that Mr. Seguin was socializing with probationers, according to Ron Gendron. Mr. Gendron considered Mr. Robert part of the problem and expected that a person in management would propose solutions and take measures to ensure that his probation officers did not become involved in potential conflict of interest situations. Mr. Gendron thought that if he approached Mr. Robert with these concerns, the Area Manager would not address or try to rectify the situation. As Mr. Gendron said, "Nothing would be done. There certainly would be no meaningful action taken." In fact, Mr. Gendron thought that if he raised such issues with Mr. Robert, there might be negative consequences for him:

... I thought he was showing favouritism to Ken and there were double standards that this—*it could come back and have repercussions for me.* That's not why I didn't—you know, I wasn't scared of that. It was a thought I had. (Emphasis added)

***Concerns About Ken Seguin's Behaviour Persist:
Probation Officers Ron Gendron and Jos van Diepen
Follow Seguin to Cornwall Square Mall***

In 1993, approximately six months before Ken Seguin's death, Mr. Gendron heard a rumour involving Mr. Seguin from officers of the Cornwall Police Service at the courthouse. There were rumours that there was a problem between Father Charles MacDonald and David Silmser, that there was a possible financial settlement with the Church, and that Mr. Seguin might be connected to this. As Mr. Gendron said, "We knew whatever it was it was being hushed and that's what really made the rumours go ... [I]t was sort of like there was this atmosphere of trying to keep it confidential."

Mr. Gendron decided to discuss these rumours with Mr. van Diepen. The windows of their offices overlooked the parking lot, and they would watch Mr. Seguin smoke cigarettes and fraternize with Ministry clients. Mr. Gendron "wondered if he was gay." Both these probation officers continued to have concerns regarding Ken Seguin's social interaction with Ministry clients. As Mr. Gendron said, "we were concerned" that Ken was "going over that social line with clients." In the summer of 1993, a few months prior to his death, Mr. Seguin began to leave the probation office on his breaks. He would get into his car, drive away from the office, and return fifteen to twenty minutes later. This was "very unusual" behaviour for Mr. Seguin. Mr. Seguin was a creature of habit in terms of his conduct at the office. But in 1993, the summer before he died:

[s]uddenly, there was this radical change in his behaviour. All of a sudden, he started taking off in his vehicle during the morning break. And we're both sort of saying, "Well, that's kind of weird; what's that all about?"

One morning, Mr. van Diepen and Mr. Gendron decided to follow Mr. Seguin when he left the office on a break. As Mr. van Diepen told the Ontario Provincial Police in a 1994 interview, "[O]nce Ron Gendron and I spied on him at the Cornwall Square."

Mr. Gendron and Mr. van Diepen maintained that they still were not concerned that Mr. Seguin was engaging in sexual relations with probationers. They believed that Mr. Seguin was socializing with clients away from the site of the Cornwall Probation Office.

Mr. van Diepen and Mr. Gendron followed Mr. Seguin by car from the probation office. Mr. Seguin drove to the Cornwall Square mall, parked his vehicle, and walked to the food court. When Mr. van Diepen and Mr. Gendron

entered this area, they saw Mr. Seguin simply drinking coffee. He remained at the mall for ten minutes, and returned directly to the Cornwall Probation Office. Mr. Gendron was relieved that they did not witness any inappropriate conduct by Mr. Seguin on that morning in 1993. Mr. Seguin continued to leave the office on his breaks in the months before his death.

Ken Seguin's Suicide

Changes in Ken Seguin's Behaviour

Probation officers and administrative staff at the Cornwall Probation and Parole Office observed behavioural changes in Mr. Seguin prior to his death. Carole Cardinal noticed that the probation officer was preoccupied and was not socializing as much with his colleagues. Administrative assistant Marcelle Léger observed Mr. Seguin's "mood swings, which was something unusual for him ... [H]is humour was just not quite the same." Ron Gendron described Mr. Seguin as "a little edgy." Two or three months before he took his life, Mr. Seguin mentioned repeatedly to administrative assistant Louise Quinn that he was "broke," that he could no longer afford to go on trips, that it was expensive to live in Summerstown, and that "he couldn't do as much as he wanted to." Prior to his death, his colleagues watched Mr. Seguin pace and smoke cigarettes in the parking lot of the probation office.

Ron Leroux, Mr. Seguin's neighbour and friend, also noticed a change in Ken Seguin's demeanour in the months before his suicide. Mr. Seguin seemed unfocused, was often upset, and would frequently go on long drives, sometimes as far as Montreal. Mr. Leroux was aware of calls from David Silmser, who alleged that his probation officer, Ken Seguin, had abused him. Ron Leroux knew that David Silmser had threatened to disclose the abuse to the police and to Ken's boss, Mr. Emile Robert, if Mr. Seguin did not raise the prescribed sum of money. Mr. Leroux testified that he overheard discussions between Malcolm MacDonald and Ken Seguin regarding the Silmser calls.

Mr. Seguin also told Gerald Renshaw about the repeated calls from David Silmser and the demand for money. Mr. Renshaw did not understand at that time why Mr. Silmser was making these demands. Mr. Seguin's anxiety and nervousness in the months before his death were very apparent to Gerald Renshaw.

Both Ron Leroux and Gerald Renshaw were with Ken Seguin on November 24, 1993, the evening before his death. Mr. Leroux and Mr. Seguin drove to Cornwall earlier that night to visit Gerald Renshaw and his girlfriend, Cara Barry. The two men returned to Summerstown, and Ron Leroux stood on Ken Seguin's front lawn, chatting about fishing and other matters. Mr. Seguin had been invited to Mr. Leroux's home the following day to celebrate American Thanksgiving.

The two men heard Mr. Seguin's telephone ringing; Ken Seguin said it was "David." Ron Leroux testified that he told Mr. Seguin not to respond to the call. He did not comply and Mr. Leroux could hear Mr. Seguin in the distance, raising his voice to the caller. Ron Leroux decided to return to his home. This was the last time Mr. Leroux saw Ken Seguin before he took his life.

As is discussed in this and succeeding chapters of this Report, David Silmsers alleged that he had been sexually abused by Ken Seguin, his probation officer. Mr. Silmsers stated that the abuse began in the 1970s when he was fifteen years old and that it was repeated. The abuse, he said, occurred at the Cornwall Probation Office and at Ken Seguin's home. He stated that Mr. Seguin offered him alcohol at his home before he sexually assaulted him and that the probation officer threatened to revoke his probation if David refused to participate in specific sexual acts.

In statements made to the Ontario Provincial Police (OPP), Mr. Silmsers said that prior to Mr. Seguin's death, he called Mr. Seguin at work and told him that he wanted a financial settlement for the abusive acts that he had committed on David Silmsers. According to Mr. Silmsers, Mr. Seguin told him to contact his lawyer, Malcolm MacDonald. Mr. Silmsers told Mr. MacDonald that he wanted \$100,000 as compensation for the abuse. According to Mr. Silmsers, Mr. MacDonald said that he would speak to Ken Seguin and that Mr. Silmsers would receive a response on either Wednesday, November 24, or Friday, November 26, 1993. By the evening of Wednesday, November 24, Mr. Silmsers had not heard from Mr. Seguin. As a result, he decided to telephone Mr. Seguin at his home between 7:00 and 9:00 p.m. on Wednesday, November 24. Mr. Silmsers asked Mr. Seguin if he was prepared to enter a settlement with him by Friday. Mr. Seguin responded that he was uncertain whether he could come up with the money. He told Mr. Silmsers that Malcolm MacDonald would contact him the following morning. Mr. Silmsers said that he told his former probation officer that if he did not enter the settlement by Friday, he would retain a lawyer and commence a lawsuit against him. There was no response from Mr. Seguin, at which time David Silmsers said goodbye and ended the call.

Malcolm MacDonald was acting for Ken Seguin before the probation officer's death. Mr. MacDonald told the OPP that Mr. Silmsers had advised him in a call on November 15, 1993, that he wanted money for the abuse and that if he did not get it, he would initiate a complaint with the Ministry. Malcolm MacDonald advised Mr. Silmsers that he would get back to him by the end of the week. Malcolm MacDonald stated that on November 19, 1993, they discussed the amount of \$10,000 per year for ten to twenty years. On November 22, a few days before his death, Malcolm MacDonald met with Ken Seguin to discuss the matter.

Ken Seguin's Death

Mr. Seguin had a number of dental surgeries scheduled prior to his death. On November 25, 1993, at 10:00 a.m., he had an appointment for a root canal procedure. His usual practice on such days was to arrive at the probation office early, work for a few hours, and then go for his dental surgery.

Mr. Seguin was known for his punctuality. He did not miss scheduled appointments. On the morning of November 25, 1993, the nurse from the dental office contacted the probation office as Mr. Seguin had not appeared for his procedure. Staff at the Cornwall Probation Office made telephone calls to his home in Summerstown but were unable to reach Mr. Seguin. Louise Quinn, administrative assistant Lise Bourgon, and Area Manager Emile Robert tried repeatedly to reach Mr. Seguin but were unsuccessful. Emile Robert sensed an air of panic in the Cornwall office: “un air de panique dans le bureau.”

When Mr. Leroux left his home on the morning of November 25 between 8:00 and 9:00 a.m., he noticed Ken Seguin's car in the driveway. This was unusual as Mr. Seguin generally left for work at about 7:15 a.m. But then Mr. Leroux remembered that Mr. Seguin had a root canal procedure and thought this explained why the probation officer was not at work that morning.

Mr. Robert's concern about the probation officer increased when he returned to the office after lunch and learned that no contact had been made with Mr. Seguin. On Louise Quinn's suggestion, Mr. Robert decided to drive to Mr. Seguin's home. He asked Jos van Diepen if he would accompany him to Summerstown, as he was the union representative. Mr. van Diepen declined but Ron Gendron agreed to go with the Area Manager. Mr. Robert decided to contact the OPP.

There was little conversation between Mr. Robert and Mr. Gendron as they travelled to Summerstown. It was clear to Mr. Gendron that his Area Manager was very concerned. Mr. Seguin's car was parked in the driveway when they arrived at his home. They knocked on the door, but there was no response. They tried to peer into the windows. The doors to his house and to the boathouse were locked.

Emile Robert went to a neighbour's home and introduced himself as Ken Seguin's employer. The neighbour told Mr. Robert that he had not seen Mr. Seguin that morning.

As Mr. Robert and Mr. Gendron were leaving Mr. Seguin's property, the OPP arrived. Constable Patrick Dussault and Mr. Robert searched for a key to the Seguin home but were not successful. They also climbed onto a ladder to peer into the windows on the second floor of Mr. Seguin's home. They did not see anything unusual.

Mr. Robert and Mr. Gendron returned to the Cornwall Probation Office.

Ron Leroux Finds Ken Seguin's Body

When Ron Leroux arrived at his home in Summerstown on the afternoon of November 25, 1993, his wife, Cindy, told him that probation officials and the police had been to Mr. Seguin's house that day. Mr. Leroux walked over to Mr. Seguin's home and knocked on the back door, but there was no response. He knew the place where Mr. Seguin hid a spare key to his house.

Ron Leroux and his wife, Cindy, entered Mr. Seguin's home. Mr. Leroux noticed that the laundry room door was slightly ajar, and he saw bloodspots across the kitchen table. The house was otherwise immaculate. As they climbed the stairs to the second floor, Mr. Leroux saw the banister "covered in blood" and then Ken Seguin's "charcoal grey" body "hanging on the door" of the bathroom. The shower curtain was broken. They saw a knife, a saw, and blood on the bathroom floor.

Ron Leroux went to the end table near Mr. Seguin's couch, took his telephone directory, and made a call to Father Charles MacDonald at his parish. Mr. Leroux testified that he left an angry message on the priest's voicemail blaming him for Ken Seguin's death: "If they could have come up with the money faster, sooner ... Ken said that's all they could raise, \$15,000." Father MacDonald "came up with \$32,000 from Rocky" (referring to Bishop Eugène LaRocque). Ron Leroux also wanted to call Malcolm MacDonald, but his wife, Cindy, insisted that they contact the police. She dialled 911. Mr. Leroux decided to keep Mr. Seguin's personal telephone directory.

When the OPP arrived at the Seguin home, Ron Leroux was asked by the police to provide a statement. Mr. Leroux told Constable Dussault about the visit with Gerald Renshaw the previous evening and chatting with Mr. Seguin outside his home, but he did not disclose the telephone call from David Silmsen. When asked by Commission Counsel why he had failed to reveal the call from Mr. Silmsen on the evening before Mr. Seguin's death, Mr. Leroux responded: "I told him [Ken Seguin] I wouldn't tell anything about the problem. He trusted me ... I didn't want to betray his trust."

Detective Constable Randy Millar instructed Mr. Leroux to sit in his police cruiser so that more details could be elicited about the circumstances surrounding Mr. Seguin's death. Detective Constable Millar asked Ron Leroux about his relationship with Ken Seguin. He also asked Mr. Leroux to describe the time they had spent together visiting Gerald Renshaw in Cornwall the night before Mr. Seguin's death, and the discovery of Mr. Seguin's body the following day. Mr. Leroux testified that he became very agitated with Detective Constable Millar, particularly when he asked him this question: "Do you think maybe Ken was in love with you and was depressed because you got married and now you're going

to Maine[?]" Detective Constable Millar testified that he asked this question to determine whether Ron Leroux and Ken Seguin were in a sexual relationship. It was Detective Constable Millar's recollection that Mr. Leroux told him that Ken Seguin was gay. The OPP officer thought that perhaps Mr. Seguin had become depressed when Ron Leroux married Cindy.

OPP Detective Constables McDonell and Fagan took a statement from Mr. Leroux a few months later, in March 1994, and again the connection between David Silmser and Mr. Seguin was not disclosed by Mr. Leroux. Mr. Leroux did not tell the police officers about the Silmser call on November 24, 1993, and the demand on Mr. Seguin to come up with a substantial amount of money.

Mr. Leroux testified that he decided to take Ken Seguin's telephone directory after he found his body, as he knew it contained names and phone numbers of probationers and former probationers. He did not want the police to have this information. Nor was Mr. Leroux forthcoming about the retention of Mr. Seguin's telephone directory when he was interviewed by the police four months after the death of Mr. Seguin. He told Detective Constables McDonell and Fagan:

While I was in the house I found Ken's phone book and that's where I got Father Charlie's phone number. I had put the phone book in my pocket and forgot to put it back. The same night I gave the phone book to Doug Seguin, Ken's brother, in front of Gerry Renshaw.

I went to the wake and funeral but I never saw Father Charlie again.

Mr. Leroux explained: "That's the story I gave ... because I thought you could get ... arrested for removing some evidence." In fact, Ron Leroux gave Mr. Seguin's telephone book to Gerald Renshaw. He contacted Mr. Renshaw on November 25, 1993, after he discovered Ken Seguin's body, and they discussed the telephone directory. Gerald Renshaw knew the directory contained the names of probationers, some of whom had attended parties at Mr. Seguin's home. He was also aware that the police were investigating the circumstances surrounding Mr. Seguin's death, and he did not want the police to have access to the information in the telephone directory. Gerald Renshaw suggested to Ron Leroux that he deliver the directory to Doug Seguin, Ken's brother. As Mr. Renshaw said in his testimony, he did not "trust" the police and did not want the officers to take Ken Seguin's telephone book. Doug Seguin received the telephone directory from Mr. Renshaw, and he ultimately gave it to the OPP. A discussion of the police investigation of Ken Seguin's death follows in Chapter 7, on the institutional response of the Ontario Provincial Police.

According to the statement made by Malcolm MacDonald to the OPP, Mr. MacDonald received a call from David Silmsers on Friday morning, asking about the settlement. Mr. MacDonald informed Mr. Silmsers that Ken Seguin was dead.²³

Cornwall Probation Staff Learn of Seguin's Death

After Mr. Robert returned to the probation office from Mr. Seguin's home on November 25, 1993, he received a call from the OPP. The Area Manager was told that a neighbour had entered Mr. Seguin's house and found the probation officer dead in his bathroom, probably a suicide. Mr. Robert was in shock.

Mr. Robert convened a meeting in the conference room of the probation office on the afternoon of November 25, 1993, to inform his staff of the tragic news. Probation staff were also shocked. The suicide was later confirmed by Coroner Conway: "Deceased was found hanging by an electrical cord in the bathroom of his house. He had also slashed his wrists before hanging ... [D]eath is attributed to suicidal hanging."

Lise Bourgon, an administrative assistant at the probation office, approached Mr. Robert on the afternoon of November 25, 1993. She told the Area Manager that rumours had been circulating that Mr. Seguin was under investigation by the police. When Mr. Robert asked Ms Bourgon why she had not advised him of this earlier, her response was that she was a member of the union and he was management. Mr. Robert was also upset that the Cornwall Police Service (CPS) had not contacted him about the allegations against Mr. Seguin.

Mr. Robert notified Regional Manager Bill Roy of Ken Seguin's death. He informed Mr. Roy on November 25, 1993, that Mr. Seguin was "found hanging at his residence" and that the OPP from the Lancaster Detachment was in the process of contacting Mr. Seguin's next of kin. Mr. Robert asked Mr. Roy if a "debriefing team" could come to the Cornwall office to help staff cope with this tragedy.

Mr. Seguin's funeral was held at St. Andrew's Church on November 29, 1993. Mr. Roy and the staff at the Cornwall Probation Office attended the funeral.

Mr. Leroux claimed that he had a discussion with Mr. van Diepen at the viewing at Ron Wilson's funeral home on Pitt Street, the day before the Seguin funeral. He said that Mr. van Diepen told him that he had warned Ken Seguin on repeated occasions about his behaviour with young probationers. Mr. Leroux

23. The OPP initiated an investigation into allegations of obstruction of justice in relation to the settlement with David Silmsers in 1994. This is also discussed in Chapter 7, on the institutional response of the Ontario Provincial Police.

was angry with Mr. van Diepen for not helping Mr. Seguin with his problems and for not taking measures to move him from Probations at the Ministry of Correctional Services to another branch of the government. When Mr. van Diepen testified, he denied that this conversation had taken place.

Prior to Ken Seguin's death, probation staff were aware of a possible connection between Mr. Seguin and the Silmsers' complaint against Father Charles MacDonald. As mentioned, prior to Ken Seguin's death, Ron Gendron had heard rumours at the courthouse concerning David Silmsers, Ken Seguin, and Father MacDonald. The rumour involved a financial settlement. Mr. Gendron testified that he had heard this rumour from the Cornwall police: "There was something about financial settlement, the church ... [N]obody knew what it was about ... but we knew whatever it was it was being hushed." Mr. Gendron said it crossed his mind that this could be an allegation of sexual misconduct. He testified that he had discussed this rumour with his colleague, Jos van Diepen, who had been concerned about Mr. Seguin's inappropriate behaviour as a probation officer. Mr. van Diepen also denied that this discussion with Ron Gendron had taken place at that time, and maintained that it was only after Mr. Seguin's death that he became aware of these rumours concerning David Silmsers, Mr. Seguin, and Father MacDonald.

Similarly, Carole Cardinal was aware of an investigation involving Father MacDonald. At the courthouse in Alexandria and from colleagues at the Children's Aid Society, Ms Cardinal heard discussions in September 1993 that "D.S." had made a complaint against Father Charles MacDonald. She learned that Constable Perry Dunlop of the Cornwall Police Service had taken Mr. Silmsers' statement to the Children's Aid Society. She and others concluded that "possibly Ken" was involved "because of his close association with Father Charles MacDonald ... [T]hey were such close friends." Ms Cardinal noticed that "Mr. Seguin became very unfocused in the months ... prior to his death," which, she said, further raised her suspicions that he was involved.

Carole Cardinal's husband, Claude Lortie, was a police officer in the Cornwall Police Service. Ms Cardinal testified that her husband told her he had been assigned a complaint against a priest. Moreover, Ms Cardinal knew that her husband needed to reschedule his meeting with the complainant because of a surgical procedure. Ms Cardinal testified that her husband never discussed that the complaint also involved her co-worker, Ken Seguin. As I discuss in the following chapter, the Silmsers' file was transferred to Constable Heidi Sebalj at the Cornwall Police Service. Ms Cardinal maintained that it was not until Mr. Seguin's death that she learned David Silmsers had alleged that Mr. Seguin had sexually abused him when he was a probationer under Mr. Seguin's supervision.

It is clear to me, from my review of the evidence, that staff at the Cornwall Probation Office knew that Ken Seguin was engaging in inappropriate contacts with Ministry clients. In fact, Mr. Downing concluded that Jos van Diepen knew more than he was willing to admit and believed that Mr. van Diepen had significant knowledge regarding Mr. Seguin's associations with probationers. This information should have been reported to their superiors at the Ministry, such as the Area Manager or others in management.

As I discuss in detail in the following chapters, it was on December 9, 1992, that David Silmsers first reported to the Cornwall police his allegations of historical sexual assault by Father Charles MacDonald and Ken Seguin.

On January 28, 1993, Sergeant Ron Lefebvre, Constable Heidi Sebalj, and Constable Kevin Malloy of the CPS interviewed David Silmsers in relation to this allegation of historical sexual assault by Father MacDonald and Mr. Seguin. On February 16, 1993, David Silmsers gave the Cornwall police a written statement describing his allegations of abuse by Father MacDonald. This statement also indicated that Ken Seguin had sexually assaulted him. On March 10, 1993, David Silmsers signed his statement at his home in the presence of Constable Sebalj and Sergeant Lefebvre. There was discussion about the allegations against Ken Seguin, and Mr. Silmsers told the police officers he didn't think he could deal with the Seguin issue at that time.

On November 2, 1993, Greg Bell and Pina DeBellis of the Children's Aid Society interviewed David Silmsers. During the interview, Mr. Silmsers alleged that Father Charles MacDonald, his former probation officer, Ken Seguin, and schoolteacher Marcel Lalonde had sexually assaulted him. Mr. Silmsers reported that he had had a number of telephone conversations with Malcolm MacDonald and Ken Seguin to discuss a financial settlement in the days preceding Mr. Seguin's death. The last of these calls occurred on the morning of November 25, 1993 when Malcolm MacDonald advised Mr. Silmsers of Mr. Seguin's death.

The following chapters of the Report, on the Cornwall Police Service, the Children's Aid Society, the Ontario Provincial Police, and the Diocese of Alexandria-Cornwall discuss in detail the Silmsers allegations of abuse by Ken Seguin, Father MacDonald, and Marcel Lalonde.

Mr. van Diepen claimed that it was only in November 1993, on the day of Ken Seguin's death, that he learned from Ron Gendron of the allegation of David Silmsers regarding Ken Seguin. Mr. van Diepen told the OPP in a 1994 statement that Malcolm MacDonald had told him in December 1993 that there was a "proposed settlement of \$11,000.00," that "Ken gave a statement admitting Ken gave him a hand job," and that "Malcolm was trying to work out a deal."

After Mr. Seguin's suicide, the Area Manager and other Ministry officials failed to react to increasing evidence that Mr. Seguin had engaged in sexual and other inappropriate conduct with probationers under his supervision. The Ministry of Correctional Services and its employees failed to initiate a review of Mr. Seguin's files. Nor did the Ministry conduct an investigation of the operations and management of the Cornwall Probation and Parole Office.

As I discuss in this chapter, probationers who had been supervised by Mr. Ken Seguin and Mr. Nelson Barque began to disclose over the next years that they, too, had been sexually abused by these Cornwall probation officers. Had the Ministry and its employees undertaken a review of the files of these probation officers and had an investigation of the operations of the Cornwall office been initiated, more victims of abuse would have been found, men who were in great need of support and counselling.

Nelson Barque Charged With Gross Indecency and Indecent Assault of Probationer Albert Roy

Albert Roy was sixteen years old when he was criminally charged with stealing a car in Cornwall. He was under the influence of alcohol at the time. This was the first time he had been in trouble with the law. Mr. Roy testified that he was sentenced to twelve months probation in 1977 and that the conditions of his probation included a curfew, abstaining from alcohol, and meeting regularly with his probation officer.

Albert Roy was initially assigned to probation officer Ken Seguin. However, within about three months, when Mr. Seguin was away from the Cornwall Probation and Parole Office on vacation, Nelson Barque became his probation officer. Mr. Barque instructed Albert to meet him weekly because he was not performing well at school. Mr. Barque sexually abused Albert Roy during this period of supervision. Mr. Barque asked Albert Roy to meet him in the evenings at the probation office, where he would touch him inappropriately. Mr. Roy recalled the lock on Mr. Barque's office door. Mr. Barque would also give him beer, in violation of the probation order, and take him on drives. He also touched Albert Roy sexually while in the parking lot at the power dam in Cornwall. And Mr. Barque sexually assaulted Albert at the probation officer's home in St. Andrews.

Albert Roy was reassigned to probation officer Mr. Seguin. He thought Mr. Seguin was Mr. Barque's supervisor and therefore decided to disclose the sexual abuse to him. But to Albert Roy's surprise, Mr. Seguin's immediate reaction to the probationer's disclosure was to tell him "that me and him could have more fun than I ever had with Nelson." Mr. Roy testified that Mr. Seguin soon also began

to sexually abuse him. Albert Roy did not report the abuse to anyone else at the time because “in [his] eyes there was no one else to tell.” He would see Mr. Seguin and Mr. Barque socializing and joking in the building with police officers. As discussed, the probation office and the police were in the same building. The courthouse was located in the next building. Albert Roy said the following in his testimony at the Inquiry:

You have to remember where the probation department was. It was on top of the police station and the courthouse was next door.

And I would see both probation officers talking and joking and slapping on the back and shaking hands with police officers and lawyers. And ... after I told Ken about Nelson and Ken started to abuse me, *I just felt that there was nowhere else to go. Like, Ken turned out to be worse than Nelson.*

So like, what’s going to be my next one? And I really didn’t believe there was anywhere to go ... I didn’t see any possibility of having somewhere to go.

I mean, Nelson—Ken seemed to be that chance ... I hear Ken talking in the office, I’d hear Nelson talk about Ken or whatever. It was always talk that he decided where the files go, and he took care of things. So when I went to Ken, I was under the impression that I was going to Nelson’s supervisor. So in my mind, at that time, as a 16 year old, I went to the top. Where else do I go? (emphasis added)

Albert Roy said that Mr. Seguin abused him at the probation office, at Mr. Seguin’s home, and in his car. Like Mr. Barque, Mr. Seguin also asked Albert to report to the probation office after hours, in the evening. Albert Roy testified that Mr. Seguin threatened to have him imprisoned if Albert reported the abuse to anyone:

... [H]e had made some threats to me that if I told anybody else he’d be the first one to know like if I told the police, and I believed that because ... I used to see him in the hallways with the police with his arm around them or slapping on the back or joking ... And like I told you before, when Nelson abused me, I told Ken and then he abused me. So like, where was that going to go from there, you know, in my mind at that time.

Albert Roy said that as the abuse progressed, “Ken became more demanding as far as time and he started to monitor” where the probationer “went during the weekend or at night.” As Mr. Roy said, “[I]t got to the point where Ken was running my life.” Albert could no longer function this way. He mustered the courage to tell Mr. Seguin that he refused to allow the probation officer to “touch” him any more:

He actually did me a favour because he pushed me to just beyond what I was going to accept, I was going to take. And I got angry and for a brief period, I had enough gumption to tell him, you know, “I’m not going to see you anymore,” “I’m not going to let you touch me anymore, you’re not going to have me anymore.”

Now, I know I told him that he could do whatever he wanted to do because I told you one of his threats were that if I didn’t report to him, he could put me in jail. And I told him when I left that office, “You do whatever you’re going to do, whatever you have to do, but I am not coming back,” and I never did.

Albert Roy was sixteen years old when he was abused by Mr. Seguin.

It was not until many years had passed that Albert Roy decided to report the abuse of his former probation officers, Mr. Barque and Mr. Seguin, to the Cornwall Police Service. This occurred in November 1994. Mr. Roy was at that time thirty-five years old.

Mr. Roy testified that he first disclosed the abuse committed by these probation officers to Bob Payette, his social worker, and to Dr. Almudevar, his psychiatrist. Mr. Roy sought counselling from these professionals to help him deal with the effects of the sexual abuse he had sustained as a youth when he was on probation. It took him fourteen years from the time the abuse ceased, in 1977, to seek therapy for his trauma. He did not disclose the sexual abuse to anyone until that time. His social worker, Mr. Payette, encouraged Albert to report the abuse. Mr. Roy went to the Cornwall Police Service and met with Constable Heidi Sebalj.

Mr. Roy was unaware of the reason for Mr. Barque’s resignation in 1982. No one from the probation office contacted him after Mr. Barque’s departure from the Cornwall office to determine whether other probationers, such as Albert Roy, were victims of sexual abuse by Mr. Barque.

In January 1995, Mr. Barque was charged with indecent assault and gross indecency of Albert Roy. The investigation of Mr. Barque by the police and the involvement of Crown in the prosecution and sentencing will be described

in detail in the following chapters of this Report. Nelson Barque pleaded guilty in July 1995. He was sentenced to four months custody and eighteen months probation.

Nelson Barque Supervised by Cornwall Office During His Probation

Mr. Emile Robert thinks it was through the media that he learned Nelson Barque had been charged and pleaded guilty to sexual abuse of a minor. The Area Manager of the Cornwall Probation Office contacted the Cornwall Police Service. He was upset that the police had not advised him that charges had been laid against a former probation officer at the Cornwall office for abusing a probationer.

On July 10, 1995, Nelson Barque pleaded guilty to indecently assaulting Albert Roy. Mr. Robert decided to ask a probation officer from Ottawa to prepare the pre-sentence report to ensure that it was independent and impartial. On August 14, 1995, the pre-sentence report was prepared by Nicole Barbeau.

Mr. Barque, as mentioned, received a sentence of four months incarceration followed by eighteen months probation for the indecent assault of probationer Albert Roy. The sentencing hearing was held on August 18, 1995, before Judge G. Renaud. Mr. Barque was fifty-six years old.

After he had served his term in prison, Mr. Barque was assigned to a probation officer at the Cornwall office. Mr. Barque asked that he be supervised in Cornwall, not Ottawa. Mr. Robert acceded to this request. The Area Manager decided that because Mr. Gendron had no previous history with Mr. Barque, he was the appropriate person to supervise the former probation officer. Mr. Barque had resigned in 1982, prior to Mr. Gendron's appointment at the Cornwall Probation Office. Regional Manager Bill Roy's advice was never sought as to whether it was appropriate for the former Cornwall probation officer to be supervised by that probation office. Mr. Roy agreed that guidelines should exist on this issue. The Regional Manager of the Cornwall office also agreed that for reasons of public perception and for the victim, who was a probationer abused by that probation officer at that office, Mr. Barque should have been supervised by a probation office in another location.

Ron Gendron had never met Nelson Barque. Shortly after Mr. Gendron joined the Cornwall Probation Office in 1984, he learned from his co-workers that Mr. Barque's departure had been the result of sexual improprieties with a probationer. He knew that the other probation officers in Cornwall were in a conflict of interest position and that they could not supervise their former colleague.

Mr. Gendron was aware that Mr. Barque's conviction for indecently assaulting a former probationer was "a high profile case." Mr. Gendron supervised Nelson Barque in 1996 while he was on probation. Administrative assistants at the Cornwall Probation Office were instructed to advise Mr. Gendron immediately

when Mr. Barque reported for his appointment, so that his waiting time in the common area of the office was minimized. Some of Mr. Barque's former colleagues, such as Mr. van Diepen, came into contact with Nelson Barque during his period of probation, which was awkward and "somewhat uncomfortable."

In my view, the Ministry of Community Safety and Correctional Services should develop a protocol that addresses the supervision by probation and parole officers of former probation officers and other staff who are convicted for sexual and other inappropriate conduct with probationers. Issues such as the venue of the probation and actual and perceived conflict of interest by probation officers supervising the client should be addressed in the protocol.

Mr. van Diepen testified that after Mr. Barque was convicted for his indecent assault of Albert Roy, Mr. Robert did not convene a meeting or discuss the offence with probation staff at the Cornwall office. Mr. van Diepen considered the Barque conviction a significant event, and he and other colleagues had questions. Neither the Area Manager of the Cornwall office nor other senior officials in Correctional Services organized a meeting of staff in the Cornwall office regarding the conviction of Nelson Barque for engaging in sexual behaviour with a probationer.

During his supervision period, Ron Gendron discussed with Mr. Barque the offence committed on Albert Roy but did not learn any information beyond what was contained in the police report. Mr. Gendron's concern was recidivism—that Nelson Barque not re-offend. Mr. Gendron testified that he asked Mr. Barque whether he had sexually abused probationers other than Albert Roy. His response, which was unforthcoming, was that Albert Roy was the only probationer with whom he had engaged in sexual behaviour. Mr. Gendron was aware that Mr. Barque had resigned from his position in Cornwall as a probation officer because of sexual improprieties with a probationer under his supervision. Ministry officials such as Mr. Robert did not initiate a review of Nelson Barque's files to assess whether other probationers had also been victims of abuse by him. The Area Manager claimed that old files had been destroyed and it would have been difficult to identify Mr. Barque's more recent files as they were not on a computer system.

In my view, the Area Manager or other Ministry officials should have initiated a review of Mr. Barque's existing files to determine whether other probationers under his supervision were also subjected to sexual improprieties.

Ron Gendron stated that Mr. Robert did not discuss or provide guidance to him on the supervision of Nelson Barque during his probationary period. Mr. Gendron did not know at this time that Albert Roy had also alleged that he had been sexually abused by another probation officer in Cornwall, Ken Seguin. Regional Manager Bill Roy was also unaware of this information.

Deputy Minister Deborah Newman testified that she also did not know at that time that Mr. Barque had been convicted of engaging in sexual acts with a

probationer under his supervision. She stated that it was not until fall 1999 that she learned of Mr. Barque's conviction for perpetrating indecent acts on probationer Albert Roy. Ms Newman supervised the Cornwall Probation Office from 1996 to 1998. Her focus was on the poor working relationship between Area Manager Emile Robert and his staff. When Ms Newman met with members of the Cornwall staff individually, none of them raised the inappropriate relationships of Mr. Barque and Mr. Seguin with probationers.

The Ministry Issue Note of December 16, 1994, discusses both the charges of indecent assault by Nelson Barque and the allegations of sexual assault by Ken Seguin:

ISSUE: PROBATION AND PAROLE CORNWALL
FORMER PROBATION AND PAROLE OFFICER CHARGED
WITH INDECENT ASSAULT AND GROSS INDECENCY ON
FORMER CLIENT

...

SUMMARY:

- On December 14, 1994 a former Probation and Parole Officer (PPO) was charged with two counts of indecent assault and one count of gross indecency on a former probationer.
- The offenses allegedly occurred 17 years ago (1977).
- The former PPO has been released on a judicial interim release order and will be appearing in court next month. The court date remains to be determined.
- In late 1981, allegations had been made concerning the former PPO. At that time, the area manager had conducted a preliminary investigation and referred the matter to the former Inspections Branch for investigation. The results of the investigation substantiated the allegations. When confronted with the findings, the PPO voluntarily tendered his resignation. Police were consulted in relation to this matter.
- In late November 1994, a staff member currently employed with the Cornwall probation and parole (P&P) office, who had been in service at the Cornwall P&P office in 1977 when these incidents allegedly occurred [sic], was interviewed by the OPP in relation to these charges.
- On November 28, 1994, ministry officials at the eastern regional office also received enquiries from the Cornwall City Police regarding the former PPO who is the subject of these most recent charges. Police were attempting to determine whether the subject

of the complaint had in fact been employed with the ministry and whether or not he had been the subject of an internal investigation. Police enquiries were directed to the ministry's Investigation Unit and to the Human Resources Branch.

- The accused has been identified as a former PPO in the December 14, 1994 radio broadcast, as well as in an article which appeared in the Ottawa Citizen December 14, 1994. It is anticipated that media coverage of this incident will be extensive.

BACKGROUND:

- On December 14, 1994 a former PPO was charged with two counts of indecent assault and one count of gross indecency on a former probationer. These offences are alleged to have occurred [sic] 17 years ago.
- Cornwall City Police have confirmed that the complainant(s) in these charges are not the same as those involved in the 1981 complaint which resulted in an internal investigation by this ministry. The 1981 complainants, however, will become part of a joint investigation between the Cornwall City Police and the Ontario Provincial Police (OPP).
- These recent allegations follow in the wake of a prior investigation into allegations of sexual assault by another PPO also previously employed in the Cornwall office. This PPO committed suicide by hanging on November 25, 1993. See Issue note Corpal. 123 version 14, September 29, 1994.
- In January 1994, media in the Cornwall area began reporting extensively on a sex scandal cover up involving the church, the police and the deceased probation officer. In September 1994, a police officer was subsequently charged under the Police Services Act for reporting his concerns about the priest and the probation officer to the Cornwall Children's Aid Society.

Ms Newman testified that she did not receive the Issue Note.²⁴ As I recommend in this Report, it is important that the Ministry develop an information management system to ensure that information on critical incidents is collected systematically and that it is easily retrievable and accessible to Ministry officials at the local and regional levels.

24. Ms Newman testified that she became aware of this several years later, in about 1999 or 2000.

Albert Roy initiated a civil lawsuit against the Ministry of Correctional Services, the estate of Ken Seguin, and Nelson Barque in July 1996. Emile Robert was involved in the discovery stage of the litigation. A settlement was ultimately reached in December 1999, and the civil action by Albert Roy was dismissed.

On June 18, 1998, Mr. Barque met with OPP Detective Constable Don Genier and Detective Constable Joe Dupuis regarding the allegations of abuse made by C-45 and Robert Sheets. Mr. Barque denied having sexual contact with C-45 but admitted that he had been involved in sexual activity for one to one and a half years with Robert Sheets when Mr. Sheets was on probation. The sexual contact took place at Robert Sheets' apartment, at his parent's home, in the probation office, and at Mr. Barque's residence. Mr. Barque showed pornographic movies to Mr. Sheets. He also supplied Robert Sheets with wine and gave him money. Mr. Barque admitted before his death to having sexual relationships with Robert Sheets, C-44, and Albert Roy. As will be discussed in further detail in this Report, the OPP was planning to charge Nelson Barque in early July 1998 with indecently assaulting two other probationers, Robert Sheets and C-45. Ten days after the OPP interview of Mr. Barque involving allegations of indecent assault of C-45 and Robert Sheets, Mr. Barque committed suicide. On June 28, 1998, Nelson Barque was found dead in a local park from a self-inflicted gunshot wound to his head.

Allegations of Sexual Improprieties on Project Truth Website

In the summer of 2000, Jos van Diepen's daughter learned from a friend that a website called Project Truth contained allegations that her father had an association with a pedophile clan. The nineteen-year-old disclosed to her mother what she had seen on the Internet. When Mr. van Diepen's wife, Sharon, told him about the information on the website, he became distraught and angry.

Mr. van Diepen and his wife accessed the Project Truth website. On it was an affidavit by Ron Leroux stating that Mr. Leroux had been at parties at the homes of Ken Seguin and Malcolm MacDonald, as well as at St. Andrew's Parish house, where he had seen a number of individuals, including Mr. van Diepen. Mr. Leroux said that he had witnessed sexual improprieties committed on minor boys at these locations by members of a pedophile clan that included named priests, Ken Seguin, and others. Mr. Leroux also asserted that at Mr. Seguin's funeral, Mr. van Diepen had disclosed that "he told Ken to watch his step for years" and that Mr. Seguin had left a "full report," "a confession" on his desk before his suicide. Mr. van Diepen was very upset to learn that his name was associated with a pedophile clan and that it was suggested he had been aware of Mr. Seguin's inappropriate behaviour but had chosen not to report it.

Mr. van Diepen Raises Concerns About the Website to Area Manager Claude Legault

When Area Manager Claude Legault²⁵ returned to the Cornwall Probation and Parole Office on August 8, 2000, after a vacation, he became aware of the Project Truth website. He learned of allegations that Jos van Diepen knew several people reputed to be associated with sexual abuse and that Mr. van Diepen had knowledge of inappropriate sexual behaviour by some of these individuals, including probation officers, but had not taken any action.

Mr. van Diepen met with Mr. Legault. He was “adamant that these were all false allegations,” and he was “concerned about the impact this would have on his reputation in the community” and how it could “compromise his ability to do his job as a probation and parole officer.” Mr. van Diepen asked Mr. Legault whether the Ministry could provide him with legal counsel to initiate measures to shut down the website.

Staff in the Cornwall Probation Office knew that Mr. van Diepen’s name was associated with sexual abusers on the Project Truth website and that he was worried about his reputation as a probation and parole officer. As Ms Sue Lariviere said at the hearings, Mr. van Diepen “was pretty distraught ... Mr. van Diepen was definitely affected by it, and he felt that he was probably in a vulnerable position because of it and I think the whole office was anyway.” Mr. Legault confirmed that other probation officers were also concerned about the website “[n]ot only for the information relating to Ken, but ... how it depicted the office as a whole and us as probation officers.”

Mr. Legault decided to alert Ms Deborah Newman to the existence of the Project Truth website. On August 11, 2000, he wrote Ms Newman a lengthy e-mail describing some of the information on the website, the effect it was having on his staff, and the concern that Mr. van Diepen might have known about the sexual abuse committed by Mr. Seguin. Mr. Legault said he had spoken to Mr. van Diepen, who was “upset to be the subject of innuendoes and unfounded allegations, and to be guilty by association.” Mr. van Diepen, wrote Mr. Legault, was also worried about “where he stands with the Ministry”:

The general mood around the office was quite dejected this week, and I had further discussions with some staff. Their concern is not only (and not mainly) over the fact that this is again in the news, but especially over the fact that it raises doubts about the credibility of Jos’ claims that he never knew anything about Ken Seguin’s sexual abuses. Things could

25. Claude Legault became the Area Manager of the Cornwall Probation Office in December 1998.

get worse next week when many staff members are back from vacation, including Don Billard, Carole Cardinal and Ron Gendron; discussions and questions will continue about the allegations on this website ... Since his return to work, Jos has not discussed this website with staff, thus increasing their doubts.

Mr. Legault listed for Ms Newman the following concerns of staff:

—Have we been duped by Jos when he claimed that he had no knowledge of any of the abuse by Ken Seguin and others?

—Why is he not talking to his colleagues to re-assure them that there is no truth to the allegations in the website?

—Staff were confident that with the efforts made by everyone to be “above board,” it would be clear for everyone who the good guys and bad ones were; this only serves to once again blur the distinction, and create doubts over everyone (or as they say, everyone is painted with the same brush).

—What is the Ministry’s position on these allegations? Is it business as usual, as if nothing happened? Should Jos be suspended as a result of these allegations, as other staff have been following allegations against them and until an investigation cleared them of any wrongdoing? Should or have police been contacted to see if they have or are investigating these allegations? (Emphasis added)

As Mr. Legault explained at the hearings, staff in the Cornwall office made a “commitment” in 1999 that “we were going to regain our integrity and our credibility ... one day at a time, one client at a time, by having a clear, consistent process and having the reassurance that we can trust each other fully.” However, the “website information seemed to cast some doubt over that in the mind of certain staff members.”

Mr. Legault made it clear in his correspondence to Ms Newman that Cornwall staff were waiting for the response of the Ministry. In his view, the Ministry should be transparent and forthcoming with information and should encourage clients to disclose the abuse. He thought the actions of the Ministry should make it evident to the public that there was no “cover-up” and that other probation officers and Ministry officials were “different” from such individuals as Ken Seguin, Nelson Barque, who had engaged in sexually inappropriate and other

improper conduct. Mr. Legault also recommended that clients who disclosed abuse be encouraged to seek counselling through The Men's Project or other social services:

I think that the rest of the staff would also like to hear what the Ministry's position or intentions are as a result of these allegations/revelations. The present silence leads them to wonder where we stand. I have repeated my position that we must continue to demonstrate a transparent and consistent approach, in which we never try to "tuck this under the carpet," but instead are forthcoming with information and encourage our clients to disclose any abuse and to seek counselling through the Men's project or other service agencies; it is the only way for our clients and the public to see that we are not involved in any form of cover-up, and that the rest of us are different from Ken, Nelson, and the rest. But I feel that it is not my position that they are after at this time, it is the Region's and the Ministry's. I would like to suggest that an e-mail from you or a visit to this office would be welcomed.

Mr. Legault also told Ms Newman that Sue Lariviere had been served with a subpoena to appear as a witness in the trial of Marcel Lalonde, a teacher charged with sexually abusing children. A Ministry client had disclosed to Ms Lariviere that Mr. Lalonde, who was still teaching, had sexually abused him. Mr. Legault wrote:

It now appears that the police investigation revealed that Mr. Lalonde had other victims, and that in one instance he introduced one of these victims to Ken Seguin and they both sexually abused him. Sue was worried that her testimony would again open the door to the whole Project Truth allegations, and that she would be questioned about Ken ... etc. (Emphasis added)

The criminal investigation, charges, and trial of Marcel Lalonde are discussed in the following chapters of this Report.

Richard Nadeau Contacts Mr. van Diepen

Within a couple of weeks of discussing his concerns about the Project Truth website with Mr. Legault, Mr. van Diepen was contacted by telephone at work by Richard Nadeau. Mr. Nadeau identified himself, claiming that he was a private investigator working for a lawyer who was not named, and said he wanted information on Ken Seguin. Mr. Nadeau did not reveal that he was responsible for the information on the website.

Mr. van Diepen replied that because he was a Ministry employee, he could not provide any particulars to Mr. Nadeau regarding Mr. Seguin. Mr. Nadeau persisted, and asked the probation officer to suggest ways in which he could obtain such information. He was especially interested in gaining access to a memo that had apparently instructed Ken Seguin to hold all his interviews with his office door open and not to have Ministry clients visit his home. Mr. van Diepen suggested that Mr. Nadeau contact the Ministry's Communications Branch or try to obtain the information through Freedom of Information. Mr. Nadeau told Mr. van Diepen that he might be subpoenaed, which would compel the probation officer to divulge the requested information. He also indicated that an unnamed lawyer would be contacting Mr. van Diepen. Mr. van Diepen prepared an incident report the following day, in which he described the content of the call with Mr. Nadeau.

The August 25, 2000, incident report was sent to Mr. Legault, who forwarded it by e-mail to Ms Newman. Mr. Legault also advised her that Keith Ouellette, "one of the victims of Ken Seguin," had visited the Alexandria office and had discussed the Project Truth website. Mr. Ouellette had stated that Richard Nadeau was a former victim who was communicating with other victims and retaining legal counsel. Although Mr. Legault did not know whether Mr. Nadeau was part of a group that was suing the Ministry, he wrote that "Mr. Nadeau is certainly very close to the action."

Mr. Nadeau again made contact with Mr. van Diepen. On August 28, 2000, he arrived at the van Diepen residence and spoke to Mr. van Diepen's daughter. Jos van Diepen was not home at the time. Mr. Nadeau returned on the afternoon of September 2, 2000. As he came up the driveway, Mr. van Diepen's daughter identified him as the man who had previously visited their home. Mr. van Diepen asked him for his name. By this time, Jos van Diepen was aware of Mr. Nadeau's association with the Project Truth website. Upon learning his name, he told Mr. Nadeau in strong language that "it would be a good idea to leave at once." As Mr. van Diepen wrote in the incident report prepared a few days after the visit, Mr. Nadeau "immediately left my premises with all haste and with my strongest encouragement."

Deborah Newman Initiates an Administrative Review at the Ministry of Correctional Services, Paul Downing Is Appointed

Ms Deborah Newman was very concerned when she learned of the Project Truth website in August 2000. She was briefed on its contents and learned that there were allegations of sexual improprieties committed by former Ministry employees. The website contained allegations that Mr. van Diepen had been at parties in the company of some alleged abusers and that this Cornwall probation officer knew about some of the sexual misconduct. She and other Ministry officials at the regional and local levels, such as Area Manager Claude Legault, had been dealing

with disclosures of abuse committed by former probation employees at the Cornwall office. As discussed, measures had been taken to ensure that staff were equipped to deal with these disclosures and that the alleged victims had access to counselling and support. The Project Truth website was “a very significant concern” to Ms Newman, who decided to initiate a Ministry review to obtain additional information on the allegations “in relation to improprieties involving Ministry employees or Ministry clients.”

Ms Newman contacted Gary Commeford, Director of Management and Operational Support at the Ministry. She informed Mr. Commeford of the anonymous website, on which allegations were made about inappropriate activities engaged in by former and current employees of the Cornwall Probation Office. When Ms Newman became the Assistant Deputy Minister in September 2000, Mr. Commeford reported directly to her.

Ms Newman discussed the prospect of an “administrative review” of the information on the website. They agreed that Paul Downing, Special Investigator at the Ministry of Correctional Services, who reported to Mr. Commeford, would be the appropriate person to conduct the review. Mr. Downing was formerly a police officer, had good investigative skills, and had significant experience in both the community and institutional divisions of the Ministry. There were allegations on the website regarding a chaplain, Father Maloney, who had a contract with the Ministry of Correctional Services for work at the Cornwall jail, in the institutional division of the Ministry.

On August 8, 2000, Deborah Newman, Mickey Stevenson, and Lori Potter spoke by telephone with Paul Downing to discuss his role in the administrative review. He was told to examine the contents of the Project Truth website and to determine whether there was a risk to Ministry clients or to public safety. Ms Newman was aware that an OPP investigation was ongoing.²⁶ Mr. Downing was permitted to liaise with the Ontario Provincial Police (OPP) and the Crown with respect to the allegations on the website regarding Ministry employees. However, Ms Newman made it very clear that she did not want the Special Investigator to “impede the criminal investigation of the police.” Mr. Downing was instructed to collect the information requested and to submit a report. After this discussion, Ms Newman briefed Morris Zbar, the Assistant Deputy Minister at that time.²⁷

26. The OPP was conducting an investigation called Project Truth. Its mandate was to investigate pedophile activity in the Cornwall area. Some of the suspects were prominent and respected citizens of Cornwall and included lawyers, Catholic priests, teachers, probation officers, businessmen, a former chief of police, and a Crown attorney. This is discussed in detail in Chapter 7, on the institutional response of the Ontario Provincial Police.

27. Morris Zbar became Deputy Minister in August 2000.

It is evident from Ms Newman's notes of August 8, 2000, that Mr. Downing's primary focus was on current employees in the Ministry of Correctional Services: "current staff the priority." As Ms Newman said in her evidence:

... [O]ur overriding concern and need-to-know was whether or not there were any current individuals at risk from current employees.

At this stage, I was aware, as you know, that we had deceased employees and I was aware that further disclosures were coming forward in relation to those deceased probation officers, but there had never been an allegation about anyone, other than from a Ministry perspective, those two deceased probation officers.

So our first concern was to determine whether there was any current and ongoing risk being presented by any current employees.

As reflected in her notes, Ms Newman was concerned about the Ministry's responsibilities in the event that current employees were suspected of engaging in sexual improprieties: "what resp do we have as a min if suspect staff involved?"

Ms Newman stressed in her evidence that Mr. Downing was instructed to conduct an "administrative review," not an "investigation" of the alleged sexual abuse. He was to gather information to assist Ms Newman and other senior officials in their assessment of what actions, if any, the Ministry should take.

On August 11, 2000, Mr. Commeford told Mr. Paul Downing he was to "take the appropriate steps to contact the authorities involved" in the Project Truth investigation and that his "role" was "to establish a liaison for the purpose of protecting the interest of the organization." Mr. Commeford also made clear in his testimony that Mr. Downing was performing an administrative review of the material on the anonymous website; he was essentially a case manager and his role was not to investigate the allegations of sexual improprieties.

There were two other entities at the Ministry of Correctional Services at that time that conducted investigations: the Professional Standards Bureau and the Independent Investigations Unit (IIU). As mentioned, the IIU was established in the early 1990s to investigate workplace discrimination, harassment, and sexual improprieties involving Ministry employees and clients. Allegations by David Silmser of sexual abuse by probation officer Ken Seguin had been reported to the IIU in 1992 but, as I discussed earlier in this chapter, the Unit failed to investigate the Silmser complaint.

Ms Newman kept the Area Manager of the Cornwall Probation Office apprised of the discussions. She informed Mr. Legault on August 13, 2000, that Special

Investigator Paul Downing would “case manage” issues surrounding the website, that he would be in contact with the law enforcement agencies, and that the Ministry wanted to ensure that it did not interfere with the police investigation:

He will be our liaison with the police, Crown and others and will inquire of Project Truth as to whether any Ministry staff (including Jos) are under investigation. This is very sensitive ground, because we cannot in any way interfere with an ongoing police investigation. On the other hand, we obviously have to protect the interests of the Ministry and our clients.

Ms Newman did not think it was appropriate to share this information with the staff at the Cornwall office:

Claude, this is highly confidential and sensitive and I don't think there is too much we can say to staff right at the moment. I think you can assure them that you and I have communicated about this, and that I am taking steps to review the matter.

Contact With Law Enforcement Agencies: OPP and the Crown

In August 2000, Mr. Downing contacted Detective Inspector Pat Hall of the OPP, who was involved in the Project Truth investigation, regarding four men named on the website: Ken Seguin, Nelson Barque, Father Kevin Maloney, and Jos van Diepen. Mr. Downing was interested in obtaining information from Inspector Hall on these individuals, former and current employees at the Ministry of Correctional Services. Mr. Downing wanted to determine whether Ministry policies had been breached by these four people. A meeting was arranged for early September 2000.

Mr. Downing also made contact with Crown Attorney Shelley Hallett, who he understood was working with Inspector Hall on these cases. In an e-mail to Ms Hallett on August 14, 2000, Mr. Downing explained his role as “case manager” for the Ministry regarding Project Truth:

My initial interest is to connect with those individuals that may hold information that could assist the Ministry in determining what, if any action should be considered surrounding employees.

I was referred to your office and to Pat Hall, Detective Inspector, Ontario Provincial Police. I spoke with Pat on Friday and he agreed to meet with me in early September to review information that may be

relevant to Ministry staff. It was Pat's opinion that to date no significant information has been discovered that might implicate improper conduct (non-criminal) on the part of Ministry staff.

However, it would be my responsibility to gather, identify and/or determine as to whether information regarding Ministry employees falls within the parameters of Ministry policies and rules that govern employee conduct.

Ms Hallett wanted to review the case law and speak to legal counsel at the Ministry of Correctional Services before she gave Mr. Downing permission to discuss these issues with the OPP investigators. The outcome of these discussions was that Paul Downing was allowed to meet with the OPP.

Paul Downing Examines the Allegations on the Project Truth Website

Paul Downing's involvement in this Cornwall matter spanned from August 8, 2000, until September 6, 2001. Throughout this period, he reported to Mr. Commeford. Mr. Downing was a designated inspector pursuant to the *Ministry of Correctional Services Act*²⁸ for the purpose of conducting Ministry inspections or investigations. Mr. Downing explained that he had the powers (1) to compel an employee to provide a statement regarding the matter under investigation; and (2) to seize without a warrant information, documents on Ministry property or associated with Ministry business. Ministry employees who obstructed investigations or withheld information were subject to dismissal. Section 22 of the *Ministry of Correctional Services Act* states:

The Minister may designate any person as an inspector to make such inspection or investigation as the Minister may require in connection with the administration of this Act, and the Minister may and has just cause to dismiss any employee of the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required by an inspector for the purposes of the inspection or investigation.

Mr. Downing's work began with an examination of the Project Truth website. There were allegations of a "pedophile network" in Cornwall that "started its operations in the 1950s." There were also assertions of a "cover-up" involving

28. R.S.O. 1990, c. M.22.

named individuals from the Cornwall Police Service, the Church, the legal profession, and Cornwall probation officer Ken Seguin. There was a list of men—one of whom was Nelson Barque—who knew each other, attended the same parties, and “shared boys.” Under the heading “The Suspects ‘*The Pedophile Clan*,’” was the following statement:

Since the first information leaked out in 1992, suspicions that a ring of pedophiles was operating in and around the city of Cornwall began to gain momentum. A “pedophile ring” consisting of prominent businessmen, clergy, judicial and political personalities, correctional and probation services officers, and other community personalities began to spread over the community like a dark cloud.

There was also the statement that probation officer Jos van Diepen had been aware of inappropriate behaviour by his colleagues and others but decided not to disclose the improprieties: “So did Joss [sic] van Diepen know as he was Ken’s coworker and he too did nothing.” Mr. Downing read the affidavit by Ron Leroux, which identified individuals who had attended parties at Ken Seguin’s home, including Mr. van Diepen. The “clan” of pedophiles described by Mr. Leroux involved Mr. Seguin as well as Father Kevin Maloney, who provided chaplain services at the Cornwall jail for the Ministry of Correctional Services.

***Further Communication Between Deborah Newman and Paul Downing:
The Need for a More Formal Investigation***

Ms Newman²⁹ read the contents of the Project Truth website on August 18, 2000, and conveyed her concerns to Mr. Downing about the statements pertaining to Mr. van Diepen. In an e-mail, Ms Newman asked Mr. Downing to interview Mr. van Diepen:

... I am very concerned by the contents as they pertain to Jos van Diepen, Probation Officer, Cornwall P & P and would like to discuss with you upon your return from vacation. At minimum, I am thinking that it would be wise to have you interview Jos to get his response to the allegations made in the website.

In early September 2000, Mr. Downing suggested to Ms Newman a more in-depth, formal, and structured approach to his review of the Project Truth

29. She was Regional Director, Community and Young Offender Services. She became Assistant Deputy Minister in September 2000.

website allegations. Although he understood the distinction between case management and investigation of the incidents, Mr. Downing thought that certain Ministry staff needed to be questioned. Moreover, he thought that it was necessary to take investigative steps to obtain possible evidence. He recommended to Ms Newman that he develop an investigative plan:

If you are available on September 5, 2000 I suggest that we talk about Project Truth. It would appear that a more formal and structured approach should be implemented to properly manage this matter.

As you are aware, Case Management responsibilities and actually investigating an incident(s) are very different functions. It would appear that certain Ministry staff need to be asked specific questions. Prior to those staff being approached, certain investigative steps should be taken to secure possible evidence.

It would be my suggestion that we discuss a number of developing issues and then implement an investigative plan. The plan would then be shared with Gary Commeford.

Ms Newman agreed that “a formal investigation is required in light of all of the information that has come to light in the past couple of weeks.” Therefore, Mr. Downing was given the “green light” to conduct a more formal investigation of the allegations on the Project Truth website.

Paul Downing Prepares Summary Review, Decision Made to Proceed With Stage One Investigation Only

Mr. Downing prepared a summary of the information on the Project Truth website pertaining to Jos van Diepen, Father Kevin Maloney, Ken Seguin, Nelson Barque, and Richard Hickerson, which he then forwarded to Ms Newman and Mr. Commeford on September 9, 2000. After providing this “Case Management Administration Summary Review,” Mr. Downing attached a list of recommendations, divided into two stages, for his superiors to consider.

Under Stage One, Mr. Downing suggested that he interview Mr. van Diepen based upon “reasonable suspicion” that the probation officer either acted improperly or failed to act, contrary to the Ministry’s rules and policies. For the same reasons, Mr. Downing also recommended that he interview Father Maloney. In order to determine what actions were taken by management “when information was received regarding alleged improper conduct” by employees, Mr. Downing proposed that he interview the Area Manager responsible for the

Cornwall Probation Office in 1992 to 1993 as well as the District Administrator. Mr. Downing knew his superiors wanted him to assess the following risk factors: “[A]re clients at risk, is the Ministry at risk, the general public at risk?”

The Ministry’s Special Investigator also suggested a second stage. If the outcome of the Stage One examination was that there was credibility to the allegations, Mr. Downing wanted to undertake a more comprehensive investigation, which would have involved obtaining information from individuals not employed by the Ministry of Correctional Services. This extended to Constable Perry Dunlop of the Cornwall Police Service, from whom he wished to obtain a statement on the names of unidentified sources on the Project Truth website and other “relevant evidence.” Mr. Downing also wanted to review the CBC radio series *Breach of Trust*, a multi-part investigative series on the existence of a pedophile ring in Cornwall.³⁰ In addition, he suggested that he obtain a statement from Ron Leroux, as well as seek the identity of three unnamed sources on the website and interview these people.

Mr. Downing proposed that in Stage Two he contact OPP Detective Inspector Pat Hall and Shelley Hallett of the Ministry of the Attorney General, Criminal Crown Office, both of whom were involved with the Project Truth investigation. He further suggested that he contact the office of the Minister of the Solicitor General/Correctional Services to obtain information apparently provided by Perry Dunlop regarding Ministry employees.

Mr. Downing received approval from his superiors to proceed only with Stage One of his review. Ms Newman and Mr. Commeford testified that the overriding concern in the administrative review was that Paul Downing not interfere with the OPP investigation. The Assistant Deputy Minister believed that interviewing individuals such as Perry Dunlop might “taint the police investigation.” Deputy Minister Morris Zbar agreed; interviewing people outside the Ministry of Correctional Services such as Mr. Dunlop or Mr. Silmsen “was going beyond his mandate.” The Stage Two investigation was never approved, even after Mr. Downing completed Stage One, which culminated in a report to Ms Newman and Mr. Commeford on October 10, 2000.

In the Stage One review, Mr. Downing contacted the Cornwall jail on September 12, 2000, and spoke to Acting Superintendent Bob Dixon regarding Father Kevin Maloney’s contract as a chaplain with the Ministry. The following day he spoke to Father Maloney to arrange an interview. The Catholic priest unequivocally denied that he was involved in any of the sexual misconduct alleged on the Project Truth website. Father Maloney confirmed that he continued to provide chaplain services to inmates and staff at the Cornwall jail. Mr. Downing

30. Aired in 1999.

also spoke to Michael Stephenson, Regional Director of the Eastern Region, who was not aware of any credible information that suggested Father Maloney was a risk to current clients of the Ministry of Correctional Services.

When Mr. Downing met with Father Maloney on September 27, 2000, the priest denied that he had been to Ken Seguin's residence in Summerstown for parties or for any other reason. Father Maloney also "flatly" denied the allegations on the Project Truth website that he had engaged in sexual conduct with young males.

Mr. Downing also made contact with Brian Scott, Acting Manager of the Independent Investigations Unit (IIU), regarding the 1992 complaint by David Silmser to Bill Roy, Regional Manager (Eastern Region) that he had been sexually abused by probation officer Ken Seguin. As discussed earlier in this chapter, Mr. Downing learned in his interview with Bill Roy that Mr. Roy had reported the Silmser complaint to the IIU. He also became aware of the discussions between Lenna Bradburn, the IIU manager in 1992, and Loretta Eley, executive assistant to the Deputy Minister.³¹ It was Mr. Downing's understanding that Ms Eley had informed Ms Bradburn that the "Legal Branch" would deal with the matter and that "no action" was required of the IIU at this time.

It was Mr. Downing's opinion that Mr. Roy had followed Ministry policies by reporting the complaint in an expeditious manner to the IIU:

Ministry documents confirm that RM [Regional Manager] Roy followed Ministry policy when he contacted the IIU and the OPP regarding David Silmser's allegations. *Ministry documents record that the Deputy Minister's (DM) office instructed the IIU not to proceed with an investigation regarding Silmser's allegations. Ministry documents record that instructions issued by the DM's office were that the Ministry's Legal Branch would provide the lead regarding David Silmser's complaint.* (Emphasis added)

Mr. Downing considered it the mandate and responsibility of the IIU to investigate allegations of sexual improprieties between Ministry employees and clients. The Special Investigator questioned the decision to have the Legal Branch handle the Silmser complaint of sexual abuse by probation officer Ken Seguin. As Mr. Downing testified, "I am not quite sure why Legal Branch would be dealing with it. It would be my opinion that they are not skilled and trained investigators."

Mr. Downing also contacted Jos van Diepen. On September 27, 2000, the day before his scheduled interview with Mr. van Diepen, Mr. Downing met with OPP Detective Inspector Pat Hall. Mr. Downing sought information on current

31. Mr. Downing also interviewed Loretta Eley.

Ministry employees under criminal investigation by Project Truth. Inspector Hall told Mr. Downing that the OPP had not found any wrongdoing by Father Maloney and that no criminal charges would be laid against the priest. It is noteworthy that this was prior to the Crown rendering its opinion that no charges should be laid against Father Maloney.

Inspector Hall also told Mr. Downing that the OPP had obtained a statement from Mr. van Diepen, which he was prepared to show him. Inspector Hall said he thought Mr. van Diepen had not been completely truthful and that the probation officer knew more than he had disclosed to the Project Truth investigators. Although the OPP Detective Inspector allowed Mr. Downing to read the van Diepen statement, he did not want the Ministry official to make a copy of it. Mr. Downing testified that it would have been very helpful to have the van Diepen statement for his administrative review and for the report that he was to submit to senior Ministry of Correctional Services officials. Inspector Hall did not disclose to the Ministry Special Investigator that the OPP had taken statements from other members of the staff at the Cornwall Probation Office. Mr. Downing testified that he was given very “limited information” by the OPP.

When Mr. Downing examined Mr. van Diepen’s statement to the OPP, he noticed that the probation officer had made several significant changes to the statement recorded by Constables Genier and McDonell, the police officers who had interviewed Mr. van Diepen in February 1994. For example, “I know Ken’s boyfriends” was changed to “I know some of Ken’s male friends” and “I know Malcolm’s boyfriends” was changed to “I know some of Malcolm’s male friends.” Mr. Downing did not “believe that the interviewing officers made that many mistakes in recording the statement.” As the Ministry Special Investigator said:

For the person interviewed to go back and change—make so many changes, it would suggest to me that the person being interviewed, Jos, after seeing what he may have said was uncomfortable with that in writing and wanted to make changes.

Mr. van Diepen told the OPP officers in his 1994 interview that he knew Ken Seguin had contacts with Ministry clients outside the Cornwall Probation Office.

Mr. Downing met with Claude Legault, Area Manager of the Cornwall Probation Office, on September 27, 2000. Mr. Legault drove Mr. Downing to several sites mentioned in the Project Truth website, including Ken Seguin’s home in Summerstown.

Mr. Downing interviewed Mr. van Diepen on September 28, 2000, the day after he met with Detective Inspector Pat Hall. Mr. van Diepen was reluctant to meet Mr. Downing as he wanted funding from the Ministry to retain a lawyer to

accompany him to the interview. Nevertheless, the probation officer appeared for the scheduled interview, which was held in Kingston at the Eastern Regional Office. His wife, Sharon, was with him.

At the interview, Mr. van Diepen told Mr. Downing that he'd been an employee at the Ministry of Correctional Services for twenty-five years and that when he joined the Cornwall Probation Office, he was the third probation and parole officer. The other two probation officers were Mr. Nelson Barque and Mr. Ken Seguin.

It was clear to Mr. Downing that Mr. van Diepen knew Mr. Seguin had been socially involved with Ministry clients outside of work. He told Mr. Downing:

... I know that some of his clients did seem to interact with him socially. Probationers stopped by his house in Cornwall and also met with him at a local tavern. They were adult Ministry clients. (Emphasis added)

This was contrary to the Ministry rules. As Mr. Downing explained, the Ministry rules were established “to ensure the integrity of a professional relationship between our employees and our clients or offenders under our care through the courts.” The importance of these rules, he said, is “for the administration of justice to show that ... those who work in the justice field are able to remain objective and to provide a service to the court that in reality and perception is fair and transparent.” It was Mr. Downing's understanding that these rules applied to current and former Ministry clients.

It is noteworthy that when Mr. Downing asked Mr. van Diepen if he had given a statement to the OPP, the probation officer's initial response was “I don't remember.” As Mr. Downing testified, this “comment about he didn't remember giving a statement ... just didn't make sense to me as an investigator.” The Special Investigator had also noticed that several differences existed between the information Mr. van Diepen conveyed to the OPP and the information he was communicating to Mr. Downing in the September 2000 interview:

... [H]is statement to Pat Hall ... seemed [to indicate] that he had further knowledge about Ken's personal life and his association with certain individuals in the community and the nature of that content.

There were also internal inconsistencies in his statement to Mr. Downing on different issues, such as whether he had reported his knowledge of Mr. Seguin's inappropriate behaviour to his superiors at the Ministry. Mr. van Diepen told Mr. Downing that notwithstanding his “poor relationship with Emile Robert,” he had told his Area Manager his “concerns regarding Ken Seguin's relationship

with clients,” but that Mr. Robert did not respond or institute measures to ensure that Mr. Seguin modified his behaviour. Mr. Downing questioned Mr. van Diepen’s truthfulness.

Mr. Downing gave his assessment of his interview with Mr. van Diepen:

Based, again, on his initial statement to the police, the changes I witnessed, his position at the beginning of my interview and the movement throughout that interview, I don’t think that—I think that Jos was reluctant and I’m not sure why. I think that he had information that he could have been more forthright about. He could have better explained some of his conduct or actions that he shared with me during the interview.

I believe that he did have significant knowledge with regards to Ken’s association with offenders within the community, contrary to Ministry rules. (Emphasis added)

Mr. Downing also interviewed Emile Robert, the Area Manager of the Cornwall Probation Office. After asking him several questions about Ken Seguin regarding the Varley incident and Mr. Seguin’s relationship with Gerald Renshaw, among other issues, it was evident to Mr. Downing that Mr. Robert had known or at least reasonably suspected that Mr. Seguin “was associating with Ministry clients outside of business,” which “certainly and clearly contravened Ministry policy.” As with Mr. van Diepen, there did not appear to be any evidence to suggest that Mr. Robert knew the association between Mr. Seguin and Ministry clients involved sexual improprieties. But “again, similar to Jos,” Mr. Downing thought that during the interview “Emile was reluctant and not forthright.” This applied to the Varley incident, for example. Mr. Downing thought that there was clearly an issue of credibility. Mr. Downing also thought that the Varley incident should have been investigated:

Based on the information that was reported and the incident and the previous knowledge or suspicions that Emile had reported having with regards to Ken’s association with clients outside of the workplace and based on my experience as a Ministry inspector, *this would clearly be a situation that would normally be investigated by an inspector or one in Level 1 investigation. This is a high profile situation that could bring disrepute to the administration of justice having someone in the justice system, at least from the initial information, possibly involved or have knowledge of. (Emphasis added)*

Mr. Downing also questioned Mr. Robert's judgment with regard to the Gerald Renshaw matter.

Transfer of Mr. van Diepen From Cornwall Probation Office to Integrated Justice

As a result of the information on the Project Truth website and Mr. van Diepen's concern about his reputation as a probation officer in Cornwall, a number of discussions took place with Mr. Legault and Ms Newman concerning a possible reassignment of Mr. van Diepen within the Ministry. In an e-mail on September 7, 2000, Mr. van Diepen wrote:

In a novel defence to a breach of probation, one client has already argued that he was afraid to report to me because I was a pedophile. On that occasion I again asked for legal counsel and that was pooh hood [sic]. Although the client was convicted, he received a mere slap on the wrist and, in the meantime, the slur against me was protected by the bounds of the courtroom ... I feel like an enigma within a riddle.

Ms Newman offered Mr. van Diepen a temporary assignment with the Integrated Justice Project in September 2000. This assignment was designed to remove him from the preparation of pre-sentence reports and active client supervision.

After the Integrated Justice Project wound down, Mr. van Diepen worked in North Bay with the Ministry's technology group. He travelled to his home in St. Andrews on weekends. In 2004 or 2005, Mr. van Diepen returned to his position as a probation officer in the Cornwall Probation Office. Mr. Legault assigned him exclusively to first-time offenders—clients who did not have a probation record and who consequently had not been on probation in the 1968–1993 period.

Paul Downing Submits His Report to Deborah Newman and Gary Commeford

Paul Downing sent his report, entitled "Administrative Review Cornwall Probation and Parole Office Project Truth Website Publication," to Deborah Newman and Gary Commeford on October 10, 2000. Mr. Downing enclosed and summarized the interview reports of Jos van Diepen, Emile Robert, Bill Roy, and Father Kevin Maloney. He also provided a list of pertinent documents. In the report, Mr. Downing discussed Nelson Barque: the McMaster report in 1982, in which Mr. Barque acknowledged that he had been sexually involved with two probationers; Mr. Barque's resignation from the Ministry in May 1982; his subsequent

employment at Équipe Psycho-sociale; and the reference for Mr. Barque provided by Cornwall Area Manager Peter Sirrs. He also discussed Mr. Barque's resignation from Équipe Psycho-sociale in 1986, after Executive Director Pierre Landry confronted him with allegations of sexual misconduct. He discussed Mr. Barque's conviction in 1995 for indecent assault and his suicide in 1998, when he was being investigated by the OPP in Project Truth.

With respect to probation officer Ken Seguin, Mr. Downing concluded that "for some time prior to PPO Seguin's death in 1993, a number of Cornwall Probation and Parole staff suspected, while other staff ought reasonably to have known, that PPO Seguin was contravening Ministry rules and policies governing employee contact with offender/ex-offenders." The Ministry Special Investigator also stated in his October 2000 report that there was no investigation at the Ministry of Correctional Services regarding David Silmser's allegations of sexual misconduct by probation officer Ken Seguin "or other matters relevant to the supervision of Ministry clients at the Cornwall Probation and Parole Office."

Mr. Commeford testified that he was "appalled" when he became aware of the issues raised in the Downing report; probationers and inmates are "vulnerable individuals and it's unacceptable to expose them or have them exposed to this type of behaviour by Ministry staff." The Director of Management and Operational Support was disturbed to learn not only that Mr. Barque had had sexual relations with Ministry clients but that Area Manager Peter Sirrs had provided a letter of reference to the executive director of Équipe Psycho-sociale:

That we would give a letter of reference to somebody who in fact left under those circumstances, very concerned. As well ... Mr. Barque's sexual involvement with clients was more than concerning to me.

Mr. Downing's findings regarding the management of the Cornwall office were also of great concern to Mr. Commeford. Mr. Robert's failure to address the Varley incident for many months, said Mr. Commeford, was "disturbing," "unacceptable," and "very poor management."

Mr. Commeford further learned from the Downing report that David Silmser had disclosed to Mr. Bill Roy in 1992 that he had been sexually abused and that Mr. Roy had contacted the IIU, but that no investigation was undertaken. Instead, the Silmser matter was referred to lawyers in the Ministry. Mr. Commeford believed that Mr. Seguin had managed to stay "under the radar" for a significant period.

Assistant Deputy Minister Deborah Newman had similar concerns about the Cornwall probation staff and management when she read Mr. Downing's report. Mr. Downing said that there appeared to be an office culture in Cornwall that tended to turn a "blind eye" to the breach of Ministry policies. For example, Mr.

van Diepen appeared to know about Mr. Seguin's personal relationships with Ministry clients outside the office and Mr. Barque's pornographic material in his office. She was also troubled about Mr. Robert's judgment when she read the Downing report. Ms Newman learned that Regional Manager Roy Hawkins had allowed a former probationer, Gerald Renshaw, to live with Mr. Seguin. Additionally, the Assistant Deputy Minister was concerned that an IIU investigation of David Silmser's complaint had not been undertaken. Ms Newman thought that follow-up interviews were necessary, particularly with regard to the absence of an investigation of the Silmser complaint by the IIU.

A conference call between Ms Newman, Mr. Commeford, and Mr. Downing took place on October 16, 2000. Mr. Downing was asked to conduct additional interviews. Mr. van Diepen had claimed in his interview with Mr. Downing that he had approached Mr. Robert and had discussed Mr. Seguin's association outside the office with probationers. Mr. Downing was asked to contact Mr. Robert to determine whether, in fact, Mr. van Diepen had raised this issue with the Cornwall Area Manager. He was also asked to follow up on the letter of reference that Mr. Sirrs had provided for Nelson Barque in his application for a position at Équipe Psycho-sociale. Assistant Deputy Minister Deborah Newman thought there were gaps in information concerning the Silmser allegation of sexual assault by probation officer Ken Seguin, and she questioned whether the Ministry had appropriately handled this complaint. As Ms Newman said in her evidence:

... So when Mr. Downing came back after having completed these interviews identified in his plan, there were some clear gaps in information and questions about—that we wanted to find out more about in relation to what happened when Mr. Silmser came forward in 1993, because that was sketchy information at that point for us at best.

...

So we wanted to get a better sense of what had happened in 1993. So a number of follow-up interviews were necessary in order to determine that. It was an area of concern obviously in terms of had the Ministry handled this appropriately.

The absence of an IIU investigation was puzzling and of concern. Mr. Downing was asked to interview Loretta Eley, the Deputy Minister's executive assistant at the time of the Silmser complaint. As Ms Newman explained, it was "unclear at that stage, without conducting further interviews, as to what had actually happened and why, in fact, there wasn't a Ministry investigation."

Mr. Downing contacted Emile Robert on October 18, 2000. Both verbally and in a letter to Mr. Downing, the former Cornwall Area Manager denied that

Mr. van Diepen had discussed with him concerns about Mr. Seguin's relationship with Ministry clients:

Further to your memorandum of October 18, 2000, this is to confirm that Mr. Van Diepen, PPO, Cornwall, never raised any concerns with me regarding Mr. Séguin's personal relationship with Ministry clients prior to Mr. Séguin's death.

Mr. Downing also contacted Peter Sirrs, the Area Manager of the Cornwall Probation Office at the time Nelson Barque was an employee at the Ministry of Correctional Services. Mr. Downing explained that he wished to discuss the reference Mr. Sirrs had provided to Mr. Pierre Landry concerning the employment of Mr. Barque. As I discussed earlier in this chapter, Mr. Sirrs initially told Mr. Downing that he did not have telephone contact with Mr. Landry and that he did not write a letter of reference. When Mr. Downing conveyed that he, in fact, had a copy of the reference letter to Mr. Landry, Mr. Sirrs replied that "somebody must have forged it." Mr. Downing considered Pierre Landry's version of events to be more credible than that of Mr. Sirrs.

On November 9, 2000, Mr. Downing had a telephone conference call with Deputy Minister Morris Zbar, Assistant Deputy Minister Newman, Mr. Commeford, and Mr. John Rabeau. Mr. Downing was asked to send his report "ASAP to Legal branch." Senior Ministry officials had several questions about the complaint by David Silmser. In particular, why did the IIU not investigate the allegation of sexual abuse by a probationer officer, and who made the decision to refer it to the Legal Branch?

Mr. Downing spoke with Denise Dwyer, a lawyer in the Ministry's Legal Branch on November 16, 2000. The Legal Branch prepared a report on the Silmser matter. The Ministry of Correctional Services claimed solicitor/client privilege at the Inquiry, and consequently, I was precluded from reviewing the contents of the report.

As mentioned, Mr. Downing interviewed Loretta Eley, the executive assistant to Deputy Minister Michele Noble, when the Silmser complaint was made to the Ministry of Correctional Services. Ms Eley agreed that the Silmser complaint was within the mandate of the IIU but claimed she could not recall who had made the decision in the Deputy Minister's office to transfer the matter to the Legal Branch and for the IIU not to proceed with the investigation.

New Disclosures of Allegations of Sexual Abuse by Probation Officer Ken Seguin

In early 2001, Mr. Downing was informed that there were three new disclosures of sexual abuse of Ministry clients by Cornwall probation officer Ken Seguin.

Mr. Downing asked Ministry Inspector Mark McGillis from the Correctional Investigation and Security Unit to interview and obtain statements from the complainants.

One of the complainants, identified at the Inquiry as C-48, alleged that Mr. Seguin had abused him in the 1970s when he was on probation at the age of fifteen or sixteen. The complainant said Mr. Seguin had threatened that if he disclosed the abuse, he would be sent to training school. A portion of the May 2001 statement is reproduced below:

After approximately two or three months of probation the inappropriate touching became regular. We would meet two or three times a week. He said if I told anyone he would tell them I was lying, that I would go to Alfred Training School. He said I would go there for a long time. He held it over my head all the time. He would threaten me with that. He started to come on to me stronger.

...

I am 46 years old now and I am still having nightmares about it. I always buried myself in drugs to get away from my memories. He wrecked my life.

Inspector McGillis interviewed C-49, who also alleged that he had been sexually abused by his probation officer, Ken Seguin, from 1988 until the early 1990s. The former probationer said that he and Mr. Seguin had supplied drugs to one another. The third individual, also a former Ministry client, was not interviewed as he refused to proceed with the complaint.

Paul Downing Instructed to Close the File: No Historical Review of Former Probation Clients and No Disciplinary Measures Taken Against Ministry Employees

In early September 2001, Mr. Downing was instructed to close the Cornwall file: "Consultation with Gary Commeford. File closed. Crown Law office dealing with matters relevant to Project Truth." Mr. Commeford explained that Denise Dwyer, a lawyer at the Ministry, would be dealing with the matter. Mr. Downing testified that "there was no explanation as to why I was to close the file." And he added:

... [I]t's my opinion, based on my experience, that lawyers aren't investigators ... so I'd be surprised unless they again employed one of the investigation units ... or some outside source, that they would actually be conducting an investigation themselves.

At this time, both Mr. Downing and Mr. Commeford's involvement with the Cornwall file came to an end.

Mr. Commeford provided a number of reasons at the Inquiry hearings for the decision of the Ministry to close the Cornwall file. He explained that the two perpetrators, probation officers Mr. Seguin and Mr. Barque, were no longer alive. In addition, the perception at the Ministry was that the current Cornwall Area Manager, Mr. Claude Legault, had been dealing well with the situation and had established a number of protocols. In Mr. Commeford's opinion, "it did not appear" that "present clients were at risk." The Ministry was involved in a number of lawsuits at the time, of which government lawyers at the Legal Branch had carriage. Mr. Commeford and other senior officials at the Ministry "were all hoping" that Project Truth and the police forces would deal with this matter.

Former Deputy Minister Morris Zbar and Deputy Minister Deborah Newman echoed many of the same explanations. As Mr. Zbar said, his "primary concern" was that there was no current risk to Ministry clients; when he was "assured" that "there was no danger currently," he "felt somewhat relieved."

No further investigations were conducted by the Ministry to identify the victims who had been sexually abused by Cornwall probation employees in the past. No efforts were made, for example, to conduct a historical review of the files of Mr. Seguin and Mr. Barque. As Deputy Minister Newman said, "quite frankly it wasn't something we deliberately turned our minds to," but she acknowledged:

... [I]t's a good point—if there was anyone who came forward through that process, that might have been an additional step that we could have taken, notwithstanding the practical difficulties of trying to source people out ...

Former Deputy Minister Zbar also agreed that an effort to locate victims of abuse who might require psychological or other counselling services would have been beneficial:

... [A] file review might not have been 100 percent complete but it could—the question that was posed was, "Would it have been useful?" And I, on reflection, think it might have been useful. It could have—even if it discovered one additional individual, that's useful.

...

... *I acknowledge the fact that it would not have been a bad idea. I didn't think of it; my officials didn't bring it to me. We didn't do it.*
(Emphasis added)

It is clear from the evidence that the Ministry of Correctional Services failed to review the files of former Cornwall probation officers Nelson Barque and Ken Seguin in order to identify further victims of abuse.

Despite the problems raised in the Downing report regarding staff and managers of the Cornwall Probation Office, no disciplinary measures were taken by the Ministry of Correctional Services against any individuals. Mr. Downing had raised serious concerns regarding Peter Sirrs, Emile Robert, and Jos van Diepen, yet no disciplinary action was taken by Ministry officials. Nor were disciplinary measures initiated against those involved in the Silmser complaint.

Senior Ministry officials knew that Mr. Sirrs had provided a letter of reference for Mr. Barque to the executive director of a mental health organization for children and adolescents, Équipe Psycho-sociale. Mr. Barque had admitted that he had engaged in sexual improprieties with Ministry clients, yet the Cornwall Area Manager did not caution the executive director against hiring Mr. Barque for a position at Équipe Psycho-sociale. In Ms Newman's notes of a meeting she had on November 14, 2000, with Mr. Zbar, Mr. Commeford, lawyer Denise Dwyer, and Mr. Rabeau, she wrote: "Peter Sirrs—pos. ref.—issue of liability." Mr. Barque was in a position of trust, he had violated Ministry rules, and Mr. Sirrs had exercised very poor judgment. But at the hearings, Ms Newman said no action could be taken against Mr. Sirrs after the Downing report because the former Cornwall Area Manager had retired from the Ministry of Correctional Services.

Area Manager Emile Robert knew or at least had a reasonable suspicion that Ken Seguin was socializing with clients outside the office, contrary to Ministry policy. Moreover, Mr. Robert had waited eight months to report the Varley incident to his supervisor at the regional office. Furthermore, the decision of Mr. Robert and Mr. Hawkins to allow former probationer Gerald Renshaw to live with the Cornwall probation officer was problematic and an area of concern to Assistant Deputy Minister Newman. In her notes, Ms Newman refers to the lengthy gap, Mr. Robert's "wilful blindness," the granting of permission to Ken Seguin to live with a former probationer, and the issue that there was "no level of inquiry until police involved." With regard to the failure to discipline Roy Hawkins, Ms Newman explained that he, too, had retired from his employment at the Ministry.

Senior Ministry officials knew that there were clear contradictions between the statement Mr. van Diepen gave to the OPP and the information he conveyed to Mr. Downing concerning his knowledge of Mr. Seguin's inappropriate interactions with Ministry clients. Mr. Downing told his superiors that he, like OPP Inspector Hall, thought Mr. van Diepen knew more about Ken Seguin's relations with probationers than he was willing to disclose to the Ministry Special Investigator. Recorded in Ms Newman's notes of November 14, 2000, is: "Jos—contradicted himself→close friend?—trying to distance himself." Section 22 of the *Ministry*

of Correctional Services Act states that an employee can be dismissed if he or she does not furnish information for the purposes of an investigation or an inspection.

The question that arises is why no disciplinary measures were imposed on Mr. Robert or Mr. van Diepen, employees of the Ministry of Correctional Services at the time Mr. Downing's report was completed in October 2000. Ms Newman stated in her evidence that Mr. Robert had been transferred from Cornwall and was working at the Ottawa Probation and Parole Office at the time of the release of the report, under the strict supervision of Mr. Gilbert Tayles, the equivalent of a regional manager. When asked whether after the Downing report it was important to convey the message to Mr. Robert that his judgment as Area Manager of the Cornwall office had been extremely poor, Ms Newman responded:

I think we were well past that with Mr. Robert and, you know, given that this was now, I don't know, many years later—what, almost 20 years later that we already knew what we were dealing with and in trying to monitor, supervise and support Mr. Robert to become a better manager.

Ms Newman also took the position that Mr. van Diepen's knowledge of inappropriate conduct of his colleagues at the Cornwall office was "inconclusive":

I think there was a sense that—in relation to Mr. van Diepen, that the information provided was inconclusive as to what he did or did not know.

Ms Newman and Mr. Zbar stated that these issues had been referred to the Legal Branch of the Ministry and that as a result of the legal advice received, it was decided that no disciplinary action would be taken against Mr. Robert and Mr. van Diepen. Ms Deborah Newman said:

I think that in relation to those events that transpired some decades earlier, we acted on the basis of the legal advice that we got.

Was I happy with that advice? No. Nevertheless, we employ our lawyers to give us advice and we consider that advice and we did so in this case.

In my view, a central reason why senior officials at the Ministry did not invoke disciplinary measures was that they were concerned that the employees would grieve. In Ms Newman's notes of the November 14, 2000, meeting with

Mr. Zbar, Mr. Commeford, Ms Dwyer, and Mr. Rabeau, she writes: “if E. & J. grieve, this cld all be made public thru griev. process.” Ms Newman confirmed that “E” and “J” refer to Emile Robert and Jos van Diepen and stated:

There’s a notation that if they’re disciplined in terms of next steps, that they would—there would be a strong possibility that they would grieve and this would be made public through the grievance process ...

... We, unfortunately, have thousands of grievances. We work in a very litigious environment and a difficult labour relations environment and we would simply need to be prepared and to prepare the minister to answer any questions with confidence in the House.

The Ministry was clearly worried about the publicity that could result from these grievances and, in particular, the problems at the Cornwall office regarding sexual abuse by employees. This explains why employees such as Mr. Robert and Mr. van Diepen were not disciplined for violating Ministry policies and rules. In my view, individuals who failed to comply with Ministry statutes, policies, and rules should have been disciplined.

Mr. Zbar and other witnesses testified that at that time, the Ministry had “serious labour relations challenges.” It “had the unenvious record of leading the government in grievances,” and he and other Correctional Services officials were “trying to find a way of addressing those things.” The former Deputy Minister recalled discussing with Ms Newman the possibility of negative publicity about Mr. Robert and Mr. van Diepen if grievances were initiated as a result of disciplinary measures. But he and Ms Newman claimed that publicity associated with grievances brought by the employees was not a consideration in the decision not to impose disciplinary action against these individuals. I do not find this convincing. In my opinion, the failure of the Ministry and its officials to impose disciplinary measures on the Area Manager and staff in the Cornwall Probation and Parole Office is attributable, in large part, to their concern about the grievances that would be initiated, as well as their concern regarding negative publicity that could ensue regarding the acts of Ministry employees.

Ministry officials were very concerned about the information that emerged from the Downing investigation and report. Two probation officers in Cornwall had committed, or were alleged to have committed, sexual acts on probationers; it appeared that staff and successive area managers knew that socializing was occurring outside the office, contrary to Ministry policy; and staff and area managers at the Cornwall office had exercised very poor judgment with regard to reporting improper conduct to their superiors. In my view, the Ministry of

Correctional Services ought to have imposed disciplinary measures on Emile Robert with respect to his deficient management practices in relation to the conduct of Mr. Seguin, and on Mr. van Diepen for failing to report his knowledge of Mr. Seguin’s inappropriate conduct with Ministry clients.

Increasing Number of Sexual Abuse Disclosures Confront the Cornwall Probation Office

It was in the late 1990s that disclosures of sexual abuse began to steadily stream into the Cornwall Probation and Parole Office (Table 5.1). As mentioned, there had been two disclosures in 1982 of sexual and other inappropriate conduct with probationers by probation officer Nelson Barque. But it was not until 1997 that disclosures of sexual improprieties committed by probation staff began to be regularly received by the Cornwall office. Even at the time Ministry officials gave their evidence at the Inquiry in 2008, victims continued to make disclosures of sexual abuse to the Cornwall Probation Office.

Table 5.1

Disclosures of Historical Sexual Impropriety by Year Reported³²

Date of disclosure	Number of disclosures
1982	2
1997	1
1999	2
2000	3
2001	5
2002	3
2003	2
2004	0
2005	4
2006	7
2007	4

According to the chart, the first eighteen disclosures took place before 2004, when this Public Inquiry was established by the Ontario government. Ms Lariviere

32. The table was prepared by Area Manager Claude Legault and probation officers Carole Cardinal and Sue Lariviere.

testified that there were thirty-six claims of abuse from 1982 to 2007.³³ All of these allegations involved abuse committed in the years 1968 to 1993.

Claude Legault became the Area Manager of the Cornwall Probation Office in December 1998. He had previously been a probation and parole officer in Hawkesbury. Prior to assuming this position, Mr. Legault was aware of the tense office environment at the Cornwall Probation Office. The Cornwall office had a reputation for strained staff-management relations and difficult working relationships. Mr. Legault also had discussions with Mr. Emile Robert and Ms Deborah Newman in preparation for his new role as the Area Manager of the Cornwall Probation Office.

Mr. Legault was intent on conveying to the Cornwall probation staff that they would not be “prisoners of the past.” It was important to the new Area Manager that the Cornwall office regain its integrity and credibility.

It was apparent to Cornwall probation staff that Mr. Legault had a very different orientation from his predecessor, Emile Robert. Mr. Gendron discussed in his evidence Mr. Legault’s positive and new approach. Similarly, probation officer Carole Cardinal discussed the different management styles and described them as “day and night.” She stated that Mr. Legault was both concerned about and supportive of his staff in the Cornwall office.

Mr. Legault described the initial disclosures in the late 1990s as “very difficult,” “emotional,” and a “very draining experience” for both the client and probation staff. The new Area Manager discussed the impact the disclosures had on staff at the Cornwall office: “[I]t took it from rumours and allegations to something that was very real and very concrete that was right in front of us. And we were a small group—there [were] only seven PO’s.”

Probation officers Sue Lariviere and Carole Cardinal described how shocked they were to receive these allegations of abuse. As Ms Cardinal said, “I found it very upsetting and it was beyond me how a colleague could do this to people we’re supposed to be helping.” The first person who disclosed to Ms Lariviere said that he had been sexually abused by Mr. Seguin at the Cornwall office on 502 Pitt Street. In 1999, this client was sitting in the waiting room at the probation office as he had an appointment for a pre-sentence report. He was about thirty years old and was visibly upset. Ms Lariviere invited the client “to step outside for some fresh air” as “he did not want to come in the office.” As they walked around the block, the man disclosed to Ms Lariviere that he had been sexually abused by Ken Seguin in that very office at 502 Pitt Street.

As with Ms Lariviere, the first disclosure of sexual abuse to probation officer Carole Cardinal was in 1999. A Ministry client who had an appointment to meet

33. Thirty-three of the disclosures were received by the Cornwall Probation Office.

Ms Cardinal later in the day was already at the office when she arrived for work at 8:30 a.m. He was “very anxious” and “agitated,” and as soon as he saw her, the client told Ms Cardinal that “he did not want to be in this office.” He explained that “he had been sexually abused by Ken Seguin” and he “started crying.” As Ms Cardinal testified, “I did the best I could at the time and that was to reassure him.” She also informed him of available support services to deal with his trauma.

What became readily apparent to Area Manager Mr. Legault and his staff was that they knew very little about sexual abuse, they had no training on disclosures, and no Ministry protocol existed to advise staff of the appropriate procedures to be followed.

In the “Factual Overview of the Cornwall Probation and Parole Office’s Institutional Response to Disclosures of Sexual Impropriety” prepared by Mr. Legault, Ms Cardinal, and Ms Lariviere, the need for training of probation officers is discussed:

As officers received disclosures it became clear to all that we did not have sufficient knowledge on male sexual victimization and how to handle disclosure effectively. Typically the probation officer would spend a few hours with the offenders during the disclosure and then a few hours with the manager de-briefing and discussing next steps. Recurring questions emerged around how and when to effectively refer the offender to other services. Probation officers did not want to be perceived as “shutting down” the disclosure but at the same time realized that, at some point the offender needed to be referred to professional counseling services.

When Ms Newman resumed her position as Regional Director of the Cornwall Probation Office in November 1999, after a secondment to the federal government, she learned of these disclosures of sexual abuse by Mr. Seguin. Ms Newman testified that it was only at this time that she became aware of “some of the patterns” and that there was “a history here.” Probationers had made allegations of sexual abuse by probation officer Mr. Barque that had occurred seventeen years earlier, in 1982. Yet it was only in late 1999 that she learned about these disclosures by Ministry clients of abuse perpetrated by Mr. Barque.

Ms Newman was responsible for the Cornwall Probation Office from 1996 to 1998 in her position as District Administrator at the Ministry of Correctional Services and from November 1999 until 2000 as Regional Director of the Eastern Region. In September 2000, Ms Newman became the Assistant Deputy Minister for Community and Young Offender Services.

Deborah Newman had worked in the same office as Bill Roy in 1993 and consequently was aware of David Silmser's allegations of sexual abuse by Cornwall probation officer Ken Seguin. She viewed it at that time as "an isolated historical event." When Ms Newman became the District Administrator of the Cornwall Probation Office in 1996, "it didn't come back to [her] mind that there had been an issue with sexual abuse in the past." She thought that incoming regional managers of the Cornwall Probation Office should have been apprised of the past events and problems, including those involving Nelson Barque and Ken Seguin. Had she had this information, Ms Newman would have had the opportunity to examine these issues regarding sexual and other inappropriate conduct of probation officers with probationers under their supervision and could have initiated measures to address the situation. As Ms Newman said in her testimony, when questioned by counsel:

COUNSEL: ... [I]t's fair to say that by the time you arrived on the scene in early 1996 there had been a number of extraordinary occurrences, including Mr. Barque's conviction for sexual assault of a probationer, including, you know, the details pertaining to Mr. Seguin and that information. So there was certainly plenty to have talked about. Is that not fair?

MS NEWMAN: Yes, that's fair.

COUNSEL: And I have to assume that as the incoming regional manager it would have been helpful to you to have that factual background; correct?

MS NEWMAN: Yes.

COUNSEL: And had you had that background I've got to think that you might have focused on additional matters in Cornwall, matters in addition to Mr. Robert's performance as area manager.

MS NEWMAN: I think that's fair.

COUNSEL: Right. Because I'm assuming that you would have wanted to certainly get to the bottom of some of these incidents and you would also have wanted to ensure that whatever had happened in the past there

was not going to be a blind eye turned in the present or in the future in that office, correct?

MS NEWMAN: Absolutely.

She thought the Ministry's information system did not ensure that officials assuming new positions became aware of the history and problems of the probation and parole offices that became their responsibility. I agree with her assessment.

It was only in late 1999, when Ms Newman returned from her secondment with the federal government, that she learned of the issues concerning Nelson Barque's inappropriate sexual behaviour in the 1980s, his plea of guilty in 1995 for indecent assault of Albert Roy, the 1998 criminal charges, and Mr. Barque's suicide. Despite the fact that she was responsible for the Cornwall office from 1996 to 1998, Ms Newman said she was not aware of the allegations and conviction of Nelson Barque for sexual acts until late 1999.

Ms Newman met with Area Manager Claude Legault and the Cornwall probation staff. She testified that Mr. Legault and probation officers Sue Lariviere and Carole Cardinal "were front and centre" in stressing "the need for training and the need for support" of the alleged victims:

The staff were very concerned about not feeling that they had been trained and that they weren't skilled in taking disclosures of male sexual abuse and the trauma that's associated with that.

So they were concerned ... obviously were concerned about the events themselves and the suffering of individuals and their clients, but they were also concerned that they felt ill-equipped to provide a safe and supportive environment for offenders coming forward to make such disclosures and this is an area of particular expertise that very few people have.

Ms Newman explained that their "preoccupation" at that time was "understanding male sexual abuse trauma," ensuring staff had the requisite skills to receive the disclosures, establishing procedures for the disclosure process, and "supporting people coming forward."

The Cornwall Area Manager contacted The Men's Project, which at that time was providing services for the Ontario Provincial Police (OPP) Project Truth investigation.³⁴ Ms Newman agreed to funding to ensure that the appropriate

34. The Project Truth investigation is discussed in detail in Chapter 7 of the Report.

training took place in an expeditious manner. The Men's Project provided three days of training to Cornwall probation officers on topics such as male sexual victimization, how to receive disclosures of abuse, and the referral of clients to specialized services. Mr. Legault was intent on ensuring that Ministry clients could safely disclose sexual improprieties and abusive acts.

Ms Lariviere explained that in the training sessions emphasis was placed on establishing a relationship with the client. The purpose of developing a rapport is to ensure that the disclosing individual feels that he is "safe in the environment." The probation officers also learned that they should not "question the validity of what" the person is "saying," and should "support" them throughout the disclosure. Probation officers Sue Lariviere and Carole Cardinal received most of the disclosures of abuse at the Cornwall office.

Area Manager Claude Legault and his staff developed a "Protocol for the disclosure of male offenders of abuse in relation to former Probation Officers and Project Truth related cases." When a probationer arrived at the Cornwall office for an appointment, a CPIC check was done to obtain his criminal record and to identify the probation officers who had previously supervised the offender. Criminal records were examined to determine if the offender had been on probation between 1968 and 1993. Appearance of the name of either Mr. Seguin or Mr. Barque was the first "red flag." The individual was asked if anything "inappropriate" occurred during the period of supervision. In the assessment process, each client was also asked if there was a "history of sexual abuse in their past."

The protocol emphasized that if an offender discloses, the probation officer must be empathetic and supportive; probation officers were instructed "not to argue on the merits of the disclosure or deny what happened" but to "allow him to disclose his version of the events." The probation officer was advised to encourage the client to report the abuse to the police and to stress that there could be other victims. The protocol also instructed probation officers to inform the client that Ministry officials have a duty to report the disclosure of abuse to the police.

Information pamphlets on The Men's Project were to be provided and victims were encouraged to seek counselling services as soon as possible. Probation staff were instructed to offer the phone number of the Mental Health Crisis Team at the Cornwall Hospital and to stress the importance of having a support system. The probation officer was to follow up with the client shortly after the disclosure.

All actions of the probation officer were to be documented on OTIS, the Offender Tracking Information System. OTIS, which began in 1999 and was gradually phased in throughout 2001 and 2002, was the first system that allowed the notes of probation officers to be filed electronically. Also, an incident report

was to be prepared as soon as possible after the disclosure. It was to be sent to the Area Manager, the Regional Office, and the Information Management Unit in North Bay.

It is my recommendation that training on sexual abuse, particularly male sexual victimization, should be mandatory for all probation officers in the province. In addition, a protocol should be developed by the Ministry of Community Safety and Correctional Services (MCSCS) for probation officers throughout Ontario on disclosure of abuse by Ministry clients.

Relocation of Cornwall Probation Office

It was apparent to the Cornwall Area Manager and staff in 1999 that victims had difficulty disclosing their abuse at the probation office. Claude Legault thought it was necessary “to get out of that location because of the history attached to it, the stigma for a lot of clients who were totally unable to step foot in the building.” Several Ministry clients alleged that they had been abused by their probation officers in these premises. In December 2001, the Cornwall Probation Office was moved from 502 Pitt Street to 331 Pitt Street.

Hiring Procedures for Probation Officers and the New Probation and Parole Service Model

Mr. Legault testified that when hiring probation officers for the Cornwall Probation Office, a CPIC search is now conducted to ensure the candidate does not have a criminal record. References are also contacted. The Cornwall Area Manager also stated that the manner in which a probationer is supervised has changed. Probationers are no longer supervised by one person but by a team. Ministry clients are supervised by probation officers as well as by professionals in mental health and those involved in substance abuse and anger management.

In 1999–2000, a new probation and parole service delivery model (PPSD model) was introduced by the Ministry of Correctional Services. It sought to provide a new manner of supervising and programming for offenders. One of the prime objectives of the PPCS model is to protect the public by increasing and intensifying the supervision and monitoring of offenders who are serving sentences in the community. Pursuant to this model, there is core rehabilitative programming (such as anger management and substance abuse), group intervention, and a more concentrated focus on criminogenic factors (factors known to have the highest correlation with re-offending). The PPCS model is based on research that examined both the risks and the needs of clients, and it seeks to provide comprehensive and individual services for the particular client. As explained by Deputy Minister Newman, the new model is an evidence-based system with a comprehensive assessment of each individual’s risk factors and

needs. Once the assessment is completed, clients are placed into different streams of probation supervision, ranging from less intensive to highly intensive. As Mr. Legault stated, the model changed ownership of the client to one that involves emphasis on partnering with community agencies. Former Deputy Minister Morris Zbar explained that the major intent of the new model is to provide the offender with an opportunity to deal with the problems that caused him or her to get into trouble with the law in the first place. Mr. Legault stated that the Cornwall Probation Office was among the first in the region to implement the new model.

As mentioned earlier, OTIS was implemented by the Ministry of Correctional Services at about the same time. This system is province wide. There is an electronic system now for maintaining records of all probationers under the supervision of the Ministry. As explained by Deputy Minister Newman, probation officers insert their case notes into the system electronically, fostering better continuity of care for probationers. Former Deputy Minister Morris Zbar testified that in his view, OTIS, coupled with the new delivery model, has enhanced the ability of the MCSCS to ensure that clients are treated appropriately and in a comprehensive manner.

Under the *Public Service of Ontario Act*, there is now whistle-blowing protection for employees. Any employee in the Ministry can go directly to the Deputy Minister to report any allegations without reprisal. The matter is investigated confidentially, and the identity of the individual who brought forward the allegations is not disclosed.

No Historical Review of Files Undertaken in Cornwall Probation Office to Identify Other Victims of Sexual Abuse

No historical review of files in the Cornwall Probation Office was undertaken for the purpose of assessing whether there were other Ministry clients who had been sexually abused by probation staff. Different reasons were put forth at the Inquiry for the failure of the Cornwall Probation Office to try to identify victims of abuse by Ministry employees. Mr. Legault stated that when the office received its disclosures in 1999, the OPP Project Truth investigation was still in process. He believed that the OPP would be determining through its investigation whether other former probation clients had been sexually abused. He also said that there were logistical problems in conducting such a search. Prior to 1997, closed files were not archived. Files that had been inactive for three years were shredded. The Area Manager of the Cornwall Probation Office explained that “a lot of those files may not be available ... [A]t best we could have gone back ... to probably '93 or '94.”

No notices were placed in local or regional newspapers by the Ministry to ask those who had been probation clients in particular years to contact the

Cornwall Probation Office. Nor were letters sent to such individuals to ask them whether Mr. Barque or Mr. Seguin had supervised them during their probation. No efforts were made to notify these former probationers, according to the evidence of probation officers at the Cornwall office. When Ms Lariviere was asked at the hearings whether any thought had been given to searching for former clients of Mr. Barque and Mr. Seguin, she confirmed that this had not been discussed at the Cornwall office. She added, “I don’t think I ever thought about that” and acknowledged that this “idea” was “probably a good one.”

I do not accept the explanations for the failure to conduct a historical review of the probation files. Efforts should have been made to identify as many victims as possible of probation officers Nelson Barque and Ken Seguin with the existing files in the Cornwall Probation Office. At the very least, a review should have been undertaken of the files from 1993. Also, the Ministry could have placed notices in the local Cornwall and regional newspapers and other media asking former probationers from the particular period to contact the probation office. This would have helped to ensure that some of the former probation clients who has been abused by their probation officers, persons in positions of trust and authority, received the necessary support and counselling to help them deal with the trauma they had endured in their youth and continued to endure in their adulthood.

When she gave her evidence at the Inquiry, Deputy Minister Newman expressed “deep regret” on the part of the Ministry of Community Safety and Correctional Services for the harm suffered by clients abused by Ministry employees. She stated that Ministry officials understood that people in the Cornwall community had lost trust and faith in government institutions such as the Ministry of Community Safety and Correctional Services. The Deputy Minister referred to the two former probation and parole officers who had been involved in events that led to the establishment of the Inquiry. On behalf of the Ministry, Ms Newman undertook to continue to provide support for those individuals who disclosed these incidents.

Deputy Minister Newman stated that the Ministry of Community Safety and Correctional Services is “not the same institution that we were.” However, she acknowledged that further improvements could be made, which she delineated. They included information sharing between the Ministry and its Justice partners, the Crown and the police; improvements with respect to file reviews by employees at the Ministry; recognition of the importance of giving clear and comprehensive direction to all employees regarding conflict of interest; and information management to ensure that information on critical incidents is collected systematically by the Ministry of Community Safety and Correctional Services. Deputy Minister Newman said:

... I would like to talk about the Ministry's deep regret.

So we're aware that the faith and the trust of the members of the Cornwall community has been compromised and part of the mandate of this Inquiry is to lead the community healing and reconciliation process.

I want to assure you that the Ministry shares this goal and that we are striving to regain the community's trust.

So we acknowledge, certainly, that two former probation and parole officers were involved in the events giving rise to this Inquiry.

We've been working diligently, as I've described, to deal with disclosures of sexual abuse that come to our attention and to strongly support victims coming forward.

The Ministry deeply regrets any harm that our clients may have suffered, and we will continue with individuals coming forward and disclosing incidents to support them in the most compassionate way possible.

I have noted that the Ministry has evolved greatly since these historical events transpired.

We're not the same institution that we were when these events occurred but we certainly acknowledge that further improvements can be made.

I commend the Ministry of Community Safety and Correctional Services for expressing its regret for any harm that its clients may have suffered and for taking steps to deal with disclosures of sexual abuse as well as for the support of victims. As was explained by a number of the context experts, sexual abuse is generally underreported. As a result, there may still be victims of abuse by Ministry employees of the Cornwall Probation Office who have not yet come forward. Because of this, and because there have been a number of confirmed cases of sexual abuse of young people by an employee of the Cornwall Probation Office, as well as many other allegations of sexual abuse reported against this probation officer and another, the Ministry and/or the Cornwall Probation Office should make a public appeal and consider making an apology. As a part of its efforts to provide support, the Ministry and/or the Cornwall Probation Office should offer counselling to any alleged victims of abuse by Ministry employees who come forward.

Recommendations

Protocol Regarding Allegations of Sexual Assault/Abuse

1. The Ministry should develop a protocol for probation and parole officers throughout Ontario on how to appropriately respond to disclosures of sexual assault/abuse³⁵ by Ministry clients.

File Reviews

2. The Ministry should develop a protocol to ensure that file reviews are conducted in circumstances in which there are allegations of sexual improprieties against Ministry employees by clients under their supervision. The protocol would address whether the review would be conducted internally or whether a request would be made for the review to be conducted by or with the assistance of the police. If an internal review is conducted, the Area Manager should examine the case notes of other clients under the employee's supervision and conduct interviews with them.
3. In the event that a probation and parole officer leaves or dies under suspicious circumstances, it is recommended that the Area Manager conduct a file review of the probation and parole officer's active caseload. If any patterns are discovered that arouse suspicion of improper conduct toward clients, a formal internal Ministry investigation should be launched, including a review of historical files and interviews with clients and former clients.

Statement of Ethical Principles

4. The Code of Conduct for probation and parole officers entitled *Statement of Ethical Principles*, which was introduced in 1995 and was recently reviewed and updated, should continue to ensure that clear and comprehensive direction is given to all employees regarding conflict of interest, and that all dealings with those currently or formerly under the Correctional Services' authority are fair, impartial, and free from impropriety. This statement should be distributed in handbook format to all probation and parole employees. This handbook should be updated as required.

35. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

Record Keeping

5. The Ministry should institute policies and procedures to ensure that information on critical incidents is collected systematically by and is easily accessible to Ministry officials at the local and regional levels and that this information is communicated to incoming Area Managers and to other officials assuming supervisory positions at the Ministry.
6. Any breach of the *Statement of Ethical Principles* or similar inappropriate behaviour on the part of an employee that is referenced in an incident report should also be referenced in the employee's performance appraisal.

Training

7. The Ministry should ensure that its employees receive regular training and updating on conflict-of-interest principles and on the ethical behaviour required of staff at the Ministry of Community Safety and Correctional Services as set out in the *Statement of Ethical Principles*.
8. The Ministry should implement province-wide, mandatory, ongoing, regular training for all probation and parole officers on sexual assault/abuse, particularly male-on-male sexual assault/abuse. This training should also provide guidance on how to deal appropriately with disclosures of sexual assault/abuse, including dealing in a sensitive manner with individuals who have disclosed sexual assault/abuse, and referring these individuals to specialized support services.
9. It is important that probation and parole officers receive ongoing training regarding their statutory reporting duties to the Children's Aid Society under the *Child and Family Services Act* to ensure that children at risk are protected.

Screening

10. The Ministry should implement and/or augment stringent screening practices for the hiring of new probation and parole officers. This screening should involve not only contacting candidates' references and performing criminal record checks on all candidates, but also an extensive interview process designed to ensure that the candidate is appropriately suited to dealing with those who are part of a vulnerable population.

Supervision

11. The Ministry should develop a protocol that addresses the supervision by probation and parole officers of former probation and parole officers and other staff who are convicted for sexual and other inappropriate conduct with probationers. Issues such as the venue of the probation and actual and perceived conflict of interest by probation officers supervising the client should be addressed in the protocol.
12. A protocol should be implemented or augmented to ensure that when after-hours meetings with probationers occur, another staff member is present and that the file notes include a reference to the time, location, reason for the after-hours consultation, and a sign-off by the other employee who was in the office.

Need for Internal Investigation

13. If a probation and parole officer who is suspected of or has been charged in regard to sexual assault/abuse chooses to resign, the allegations should still be fully investigated by the Ministry. An investigation may reveal other potential victims who should be contacted. Any alleged victims of the accused individual should be offered support and counselling.

Discipline of Ministry Employees

14. Fear of grievances or the publicity associated with them should not be a consideration when determining whether to discipline Ministry employees.

Reference Letters

15. The Ministry should develop or augment protocols to ensure that detailed information regarding any breach of the *Statement of Ethical Principles* or similar inappropriate behaviour by an employee or former employee will be mentioned in the employee's or former employee's personnel file and any reference letter prepared in regard to the employee or former employee. The Ministry should implement measures to ensure that detailed information on the reasons for an employee's departure from the Ministry, including details of inappropriate and sexual conduct, are included in the employee's personnel file.

Office Communications

16. Given that good interpersonal relationships are vital to continued excellent public service, senior supervisors should be alerted to deteriorating relationships and these issues should be addressed in a timely fashion. In the Cornwall Probation and Parole Office, a “poisoned” work environment created an impediment to disclosures of suspicions of sexual assault/abuse of probationers.
17. The Ministry should take measures to ensure that employees are aware of “whistleblower” legislation in Ontario and that any concerns they bring forward in regard to fellow employees concerning inappropriate behaviour with clients are confidential.

Information Sharing

18. The Ministry should consult with its Justice partners, police, and Crown attorneys, in developing a protocol with respect to the sharing of information regarding complaints or allegations of sexual assault/abuse against current and former Ministry employees.

Public Appeal

19. The Ministry should make a public appeal, urging any victims of sexual assault/abuse to come forward. Given that there have been a number of confirmed cases of sexual assault/abuse of young people by an employee of the Cornwall Probation and Parole Office, that there have been many other allegations of sexual assault/abuse of young people reported against this probation officer and another, and that sexual assault/abuse is known to be generally underreported, it is likely that there are still victims of sexual assault/abuse within the Cornwall area who have not yet come forward. Therefore, the Ministry should convey the message that any individuals who come forward with allegations of sexual assault/abuse will be treated with respect, dignity, and compassion. The Ministry should offer counselling and support to any alleged victims of sexual assault/abuse who come forward.
20. The Ministry should consider making a public apology to all confirmed victims of sexual assault/abuse of young people by an employee in the Cornwall Probation and Parole Office. Given that the *Apology Act*, which came into force in Ontario in April 2009, allows institutions to make apologies without admitting civil liability,

it is also recommended that the Ministry consider extending such an apology to alleged victims who have reported allegations that have not been confirmed through a civil or Ministry process and to victims who have either opted not to come forward or who are yet to come forward. Although Deputy Minister Deborah Newman read an apology when making recommendations to the Inquiry, a similar apology from the Director of the Cornwall Probation and Parole Office could be a positive step toward healing for victims and alleged victims of sexual assault/abuse by probation staff.

Institutional Response of the Cornwall Community Police Service

Introduction

The Cornwall Community Police Service (CCPS), one of the oldest police forces in the country, was established in 1789 as the Cornwall Police Force. At the time, its jurisdiction consisted of one square mile, bordered to the east by Marlborough Street, to the west by Cumberland Street, to the north by Ninth Street, and to the south by the St. Lawrence River. In 1957, the City of Cornwall amalgamated with the Township of Cornwall and expanded its municipal boundaries to its current area of 61.8 square kilometres, extending from Grant's Corner, along Cornwall Centre Road and South Branch Road, up to the west line of Lacweld, over to the International Bridge, and to the Gray's Creek area. The Cornwall Police Force and Cornwall Township Police Force merged to take jurisdiction over the new municipal area.

Cornwall Deputy Chief Danny Aikman testified that Cornwall's close proximity to Montreal, Ottawa, the United States border, and Akwesasne territory makes it a prime area for smuggling and organized criminal activity which creates unique challenges for the Cornwall Police Service (CPS).¹ He also stated that Cornwall's socio-economic situation results in criminal activities such as drug trafficking.

Prior to the mid-1990s, Cornwall was divided into two large patrol zones. However, as a result of the recommendations of a 1995 community advisory committee,² the police service divided the city into six smaller zones, to enable officers to have more in-depth knowledge of the community that they were patrolling.

1. Throughout this chapter of the Report the service will be referred to as the Cornwall Police Service (CPS).

2. Deputy Chief Aikman stated that in 1995, Chief Repa formed a community advisory committee to provide feedback regarding community needs and a report was provided to him containing recommendations.

The Cornwall Police Service is governed by a vision, mission and value statement. Its vision is “a safer Cornwall,” and its mission is to work in partnership with the community to make Cornwall a “safer place to live, work and visit.” The values articulated in the statement are that staff and members of the police force subscribe to (1) the preservation of life and property; (2) respect for one another and the persons encountered in their daily duties; (3) loyalty; (4) teamwork; (5) clear and open communication, consultation, and shared decision making; and (6) integrity and professionalism.

After the 1957 amalgamation of the Cornwall Police Force with the Cornwall Township Police Force, the service consisted of fifty-one officers. This number rose to sixty-three in 1970, seventy-seven in 1980, and eighty in 1990. The number of officers remained at approximately eighty for the next decade or so, and as of 2006, the police force has consisted of eighty-four officers.

The duties of a police officer, as set out in the *Police Services Act*,³ include preserving the peace, preventing crimes, assisting victims of crime, executing warrants, laying criminal charges, and participating in criminal prosecutions. The *Act* also states that police officers must perform duties assigned by the chief of police, and they must complete the prescribed training.

There is a chain of command in the Cornwall Police Service, which requires officers lower in rank to report to and follow the orders of their superiors. The chain of command from lowest to highest rank is as follows:

Constables: serve as front-line police officers

Sergeants: supervise constables

Staff sergeants: have responsibility for a bureau or unit and fulfill an administrative role

Inspectors: supervise sergeants and staff sergeants.

“Detective” is placed before the rank of officers working in the Criminal Investigation Bureau (CIB), the division of the CPS that handles cases that are particularly time consuming or that require specific expertise, such as sexual assault, robbery, assault, fraud, and domestic violence. For example, a constable in the CIB is called a detective constable, and a sergeant in this division is referred to as a detective sergeant.

The Deputy Chief of Police reports to the Chief of Police and is responsible for the operational and administrative aspects of the police force. The Deputy Chief assists the Chief in implementing provisions in the *Police Services Act* and is responsible for creating, revising, and reviewing policies and procedures.

3 . R.S.O. 1990, c. 15, s. 42(1).

He or she also assists the Chief of Police with employment matters, pay equity issues, and other administrative matters.

The Chief of Police is responsible for administering the police force and overseeing its operation in accordance with the objectives, priorities, and policies established by the Police Services Board, and for ensuring that members of the police force carry out their duties in accordance with the *Police Services Act* and the Regulations. The Chief of Police is also responsible for maintaining discipline in the police force, ensuring that the police force provides community-oriented police services, and administering the complaints system.⁴

Those who have served as Chief of Police of the Cornwall Police Service from the 1940s to present are listed below:

1943–1953	Frank Hunter
1953–1974	Allan Clarke
1974–1984	Earl Landry Sr.
1984–1993	Claude Shaver
1994–1995	Carl Johnston (Acting Chief)
1995–2003	Anthony Repa
2004–present	Daniel Parkinson

The Cornwall Police Service is headed by a Board of Commissioners, a civilian body that oversees police functions. The *Police Services Act* states that municipal police services boards are “responsible for the provision of adequate and effective police services in the municipality.”⁵ This responsibility includes duties such as determining objectives and priorities with respect to police services; establishing policies for the effective management of the police force; appointing, directing, and monitoring the Chief of Police; and administering the budget for the police force.⁶ The Board appoints the Chief and Deputy Chief of Police.⁷

The Cornwall Police Service is organized into various administrative and operational divisions, including the Criminal Investigation Bureau, which, as mentioned, investigates sexual assaults. Although there was a period in the 1990s when it was titled E Unit, the CIB has existed since at least 1970. Some of the officers in charge of the CIB have been Richard Trew, from 1986 to 1990, Stuart McDonald, from 1990 to 1992, Luc Brunet, from 1993 to 1999, and Garry Derochie, from 2001 to 2005.

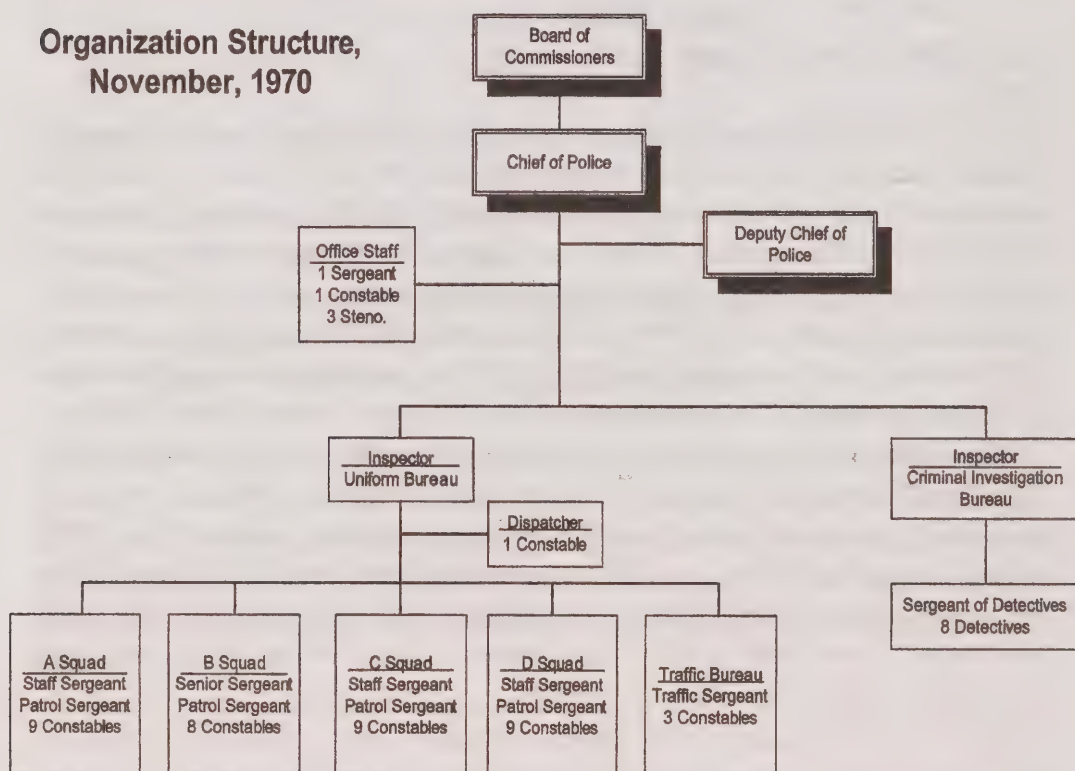
4. *Police Services Act*, s. 41(1).
5. R.S.O. 1990, c. 15, s. 31(1).
6. See *Police Services Act*, s. 31(1) and 39(3).
7. *Police Services Act*, s. 31(1)(d).

The Youth Bureau,⁸ a sub-unit of the Criminal Investigation Bureau, was established in 1984. It began as a division that investigated offences under the *Young Offenders Act*.⁹ It governed the criminal prosecution of youths between the ages of twelve and eighteen. The Youth Bureau began to investigate incidents involving child victims, such as child abuse, and in the mid-1990s the investigation of all sexual offences¹⁰ became the responsibility of the Youth Bureau. There were two officers in the Youth Bureau between 1990 and 1995.

In 2000, the Youth Bureau became the Sexual Assault and Child Abuse Unit (SACA), which consisted of five officers. The increase in officers working in this area was the result of the rise in the number of complaints received by the Cornwall Police Service as a result of Project Truth, the Ontario Provincial Police investigation into allegations of sexual abuse of young males by influential citizens in the Cornwall area, which began in 1997. Project Truth is discussed in detail in Chapter 7, on the institutional response of the Ontario Provincial Police. Since 2005, the number of officers in SACA has decreased to three.

Below are organizational charts of the Cornwall Police Service in various periods: 1970, the mid-1980s, 1993, and 2005.

Organization Structure, November, 1970



8. It was previously known as the Juvenile Branch.

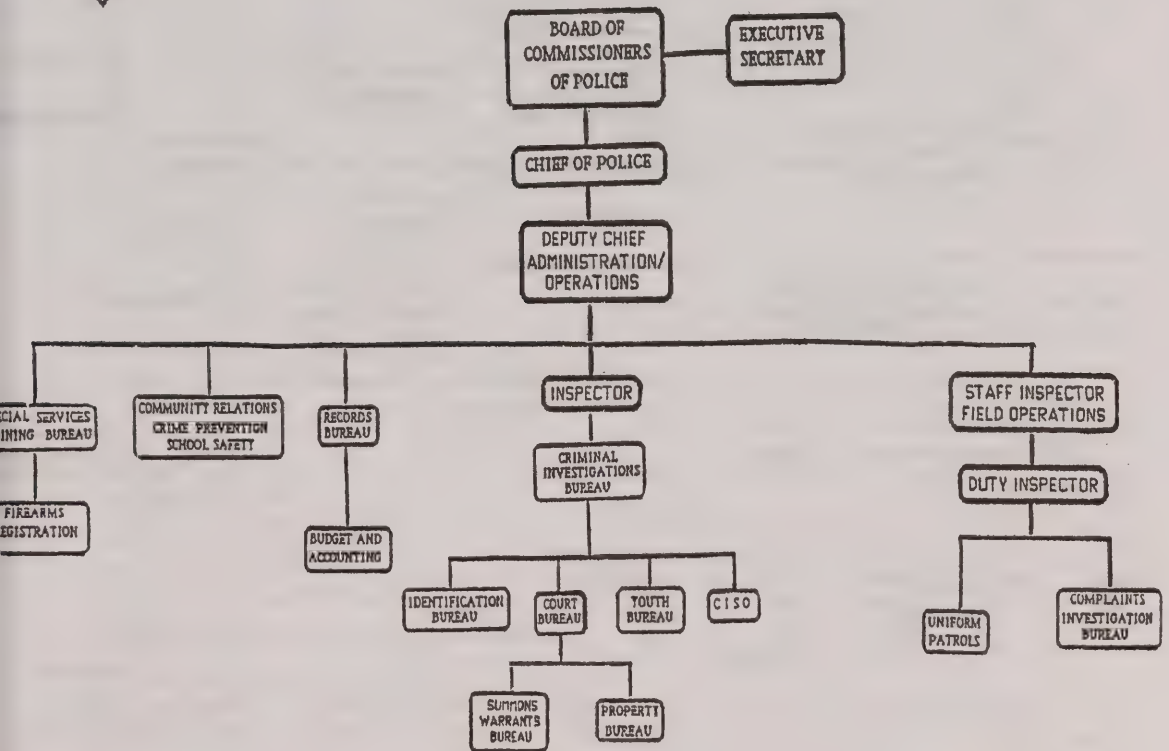
9. R.S.C. 1985, c. Y-1.

10. While sexual assault investigations were generally done by the Youth Bureau, some may have been conducted by the "E" Unit.

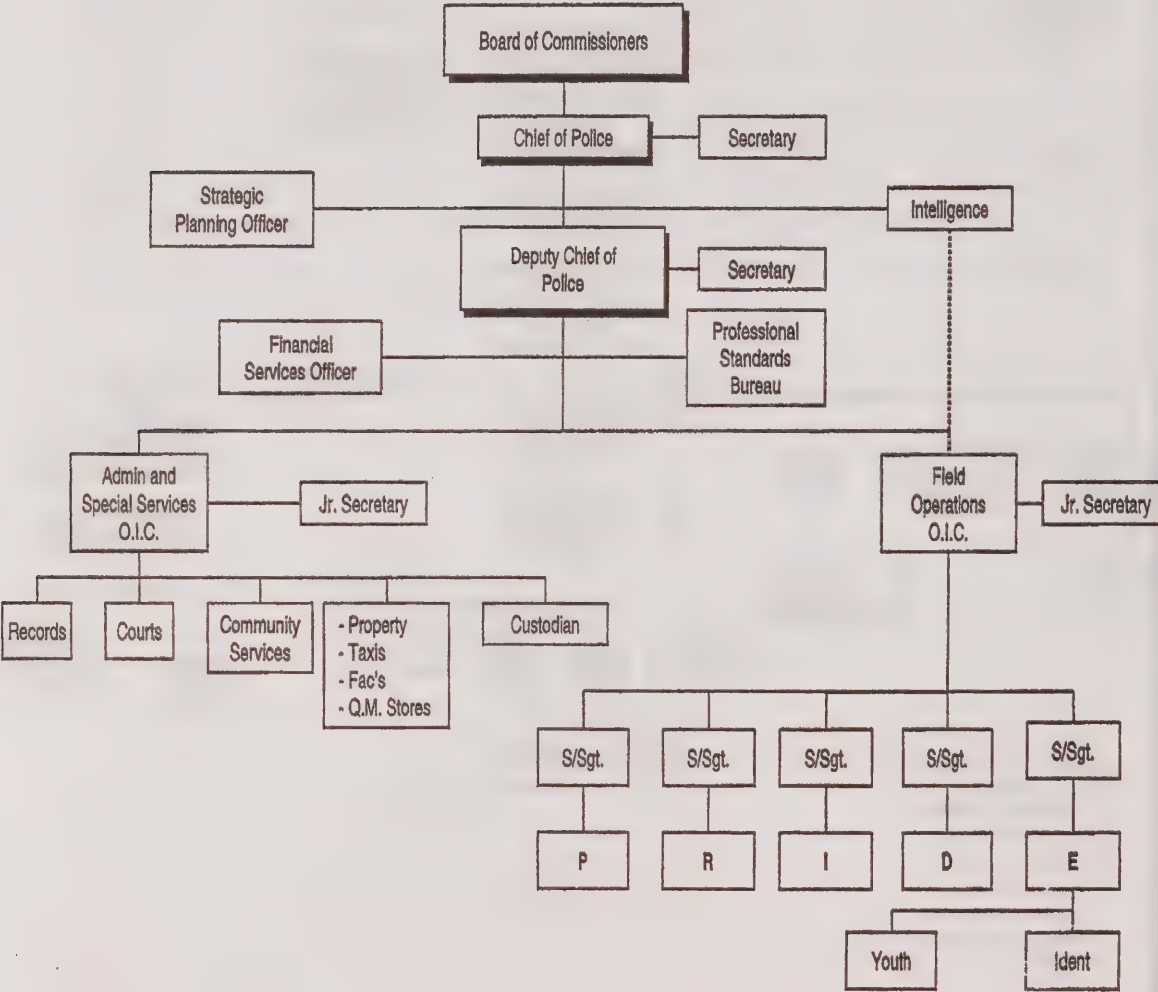


ORGANIZATIONAL STRUCTURE

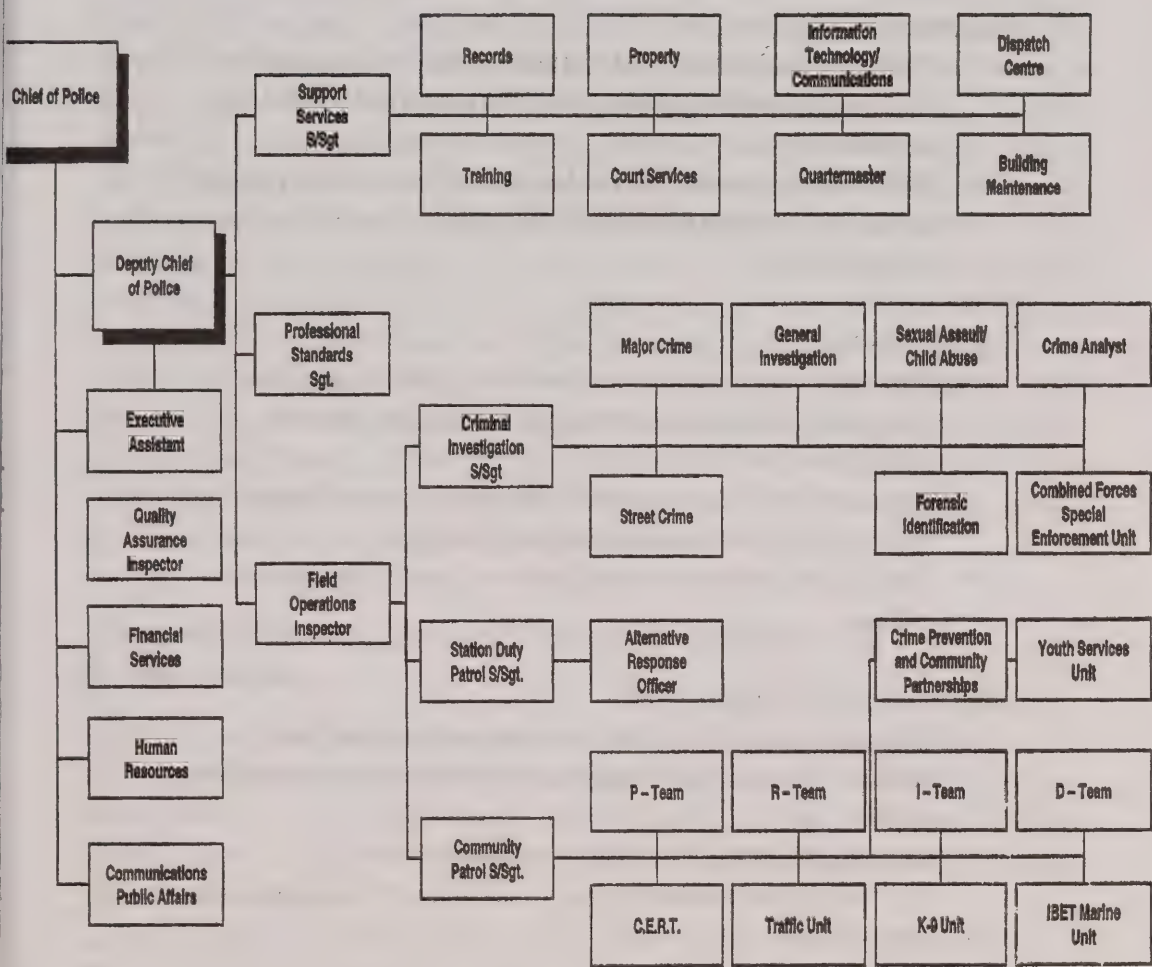
1984-85



CPS Organizational Structure, 1993



CPS Organization Structure, 2005



The CPS adheres to a policing model known as “community policing,” which focuses on crime prevention through working with stakeholders in the community. Cornwall Chief of Police Daniel Parkinson explained that the shift toward community policing in Canada began in the mid- to late 1980s. Community policing has been a guiding principle in the *Police Services Act* since 1990, and the Ontario Association of Chiefs of Police and the Ontario Ministry of Public Safety and Security issued a community policing model in the 1990s. The model lists the following five components:

Community Development

- Programs initiated and led by the community that contribute to crime prevention, public education and other community policing goals
- Encouraging communities to become full partners in policing
- Initiatives intended to identify and address some of the root causes of crime

Police Learning

- Development of systems both within a police service and provincially to ensure continuous learning for members of police services
- Education for police leaders in strategic planning, change management, and organizational engineering
- Delivery of problem-oriented policing training for frontline officers

Police Service Re-Engineering

- Change management to revise police service structures, human resources and administration processes, and operational policies
- Strategic planning for effective police services
- Technology enhancement and streamlining of administrative processes

Enforcement

- Enforcement activities that optimize services to the community
- Focused enforcement in response to community safety concerns
- Involvement of communities in determining objectives and priorities

Community/Police Partnerships

- Full and equal partnership between the police and community
- Maintenance of public order, the prevention of crime, and the response to crime, are the shared concerns and responsibilities of the community and the police
- Permanent mechanisms to permit meaningful community input into all aspects [of] policing in a community.

The response of the Cornwall Police Service to allegations of historical sexual abuse of children and young persons in the Cornwall area will be examined in this chapter. Investigations of complaints by individuals who alleged that probation officers, members of the clergy, teachers, federal government employees, child-care workers, and staff under the supervision of the Children's Aid Society abused them in their youth will be described and analyzed. Recommendations will be made on such issues as training of officers for sexual abuse investigations, and in particular historical child sexual abuse cases, as well as victim support and accommodation, note taking, and interviewing. The supervision of officers conducting these investigations at the police force will also be addressed to ensure that such cases are given the attention and resources necessary to be pursued expeditiously and thoroughly. The importance of sharing information on such cases among officers in the Cornwall Police Service and other police forces such as the Ontario Provincial Police, as well as with institutions such as the Children's Aid Society, will also be discussed.

Allegations of Sexual Assault Made by Probationers of Nelson Barque

As discussed in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services, Nelson Barque was a probation and parole officer in Cornwall from 1974 to 1982. He was the probation officer for Robert Sheets, C-44, Albert Roy, and C-45, all of whom alleged that Mr. Barque sexually abused them.

Mr. Barque was C-44's probation officer from 1980 to 1982. In a statement he provided in 1982 to Inspector Clair McMaster of the Ministry of Correctional Services, C-44 claimed that Mr. Barque had given him alcohol in breach of the conditions of his probation and was sexually involved with him from 1981 to 1982. C-44 was approximately twenty years old at this time. He claimed that Mr. Barque had engaged in sexual acts with him on several occasions both at the Cornwall Probation and Parole Office and at the probation officer's home.

In a statement to OPP Detective Constable Don Genier in June 1998, Robert Sheets claimed that he met Mr. Barque through C-44 when Mr. Sheets was about eighteen years old. At this time, in the late 1970s, Mr. Ken Seguin was Mr. Sheets' probation officer. Mr. Barque subsequently became Mr. Sheets' probation officer in January 1982. Mr. Sheets stated that Mr. Barque gave him money and alcohol and that he did work for the probation officer at Mr. Barque's home. A sexual relationship ensued. Robert Sheets alleged that the sexual activity occurred about once a week until Mr. Barque resigned from his position as a probation officer at the Cornwall office in May 1982. Mr. Sheets also stated that most of the sexual activity took place at Mr. Barque's home in St. Andrews and that on a couple of occasions it occurred at the home of Ken Seguin, who was not present at the time. Mr. Sheets also claimed that Mr. Barque had blankets in his office, but Mr. Sheets had refused to engage in sexual activity at the Cornwall Probation Office.

As mentioned in the chapter on the institutional response of the Ministry of Community Safety and Correctional Services, the Area Manager of the Cornwall Probation Office, Peter Sirrs, received a call in April 1982 from Ronald St. Louis, with whom Robert Sheets had been living as a boarder. Mr. St. Louis stated that Mr. Sheets had initiated a fight with C-44 and another individual, causing considerable damage to his residence, and moreover, had threatened Mr. St. Louis with bodily harm. Mr. St. Louis told Mr. Sirrs that the Cornwall police had not taken any action against Mr. Sheets but rather had referred Mr. St. Louis to Mr. Barque, Robert Sheets' probation officer. Mr. St. Louis told the Cornwall Area Manager that Mr. Barque was not only aware of Robert Sheets' use of alcohol and drugs but had in fact provided alcohol and drugs to Mr. Sheets and was sexually involved with the probationer.

As discussed in Chapter 5, after the incident at the St. Louis home, Mr. Barque met with Staff Sergeant Maurice Allaire of the Cornwall Police Service (CPS) and Justice of the Peace Keith Jodoin, Administrator of the Provincial Court. Mr. Jodoin had cautioned Mr. Barque on his supervision of Robert Sheets and told him that he must take action with regard to Mr. Sheets' unacceptable behaviour. Mr. Barque discouraged further police action and indicated he would report back to Staff Sergeant Allaire. However, the officer did not hear from Mr. Barque on this subject.

Mr. Sirrs spoke to Cornwall Police Sergeants Masson and Laroche on April 9, 1982, who advised him that they had previously received a complaint from Gerald Levert, superintendent of the building in which the Cornwall Probation Office was located. As mentioned earlier, the superintendent reported unusual activity involving Mr. Barque and young males at the office at night, which had been observed by janitorial staff. The police officers allowed Mr. Sirrs to read some

CPS occurrence reports in which a probationer alleged that Mr. Barque and Mr. Sheets had a sexual relationship. Sergeant Masson indicated to Mr. Sirrs that he thought Mr. Barque was too frequently in the company of Robert Sheets.

The CPS officer acknowledged that he had been aware of rumours about a sexual relationship between Mr. Barque and Mr. Sheets for some time, but Sergeant Masson stated that he did not have sufficient information to lay criminal charges, particularly since the individual who had provided the information about the sexual relationship would not act as a witness. Sergeant Masson reported that Mr. Barque had intervened with the police on several occasions to ensure that no action was taken against his probationers. As discussed, there was an incident with Robert Sheets during which Mr. Barque was cautioned that he would be charged with obstruction if he did not stop interfering with the Cornwall police. Sergeant Masson indicated to Mr. Sirrs that he had informally counselled Mr. Barque with regard to the rumours and the probation officer's close association with probationers, including Robert Sheets. Mr. Barque, he said, had acknowledged that he needed to do something about this situation.

As discussed, the Ministry of Correctional Services conducted an internal investigation of Mr. Barque in April and May 1982 concerning the allegations of sexual misconduct. Mr. Barque tendered his resignation to the Ministry before the conclusion of the investigation. After resigning, Mr. Barque provided the Ministry with a statement in which he admitted to instigating a sexual relationship with probationers C-44 and Robert Sheets and to providing alcohol to these probationers in breach of their respective probation orders.

In my view, the Cornwall Police Service did not conduct a proper investigation into Nelson Barque's sexual involvement with probationers in 1982. Mr. Barque had admitted his sexual involvement with C-44 and Robert Sheets to officials at the Ministry of Correctional Services. Had CPS officers undertaken a thorough investigation of the matter, not only would they have obtained further details regarding Mr. Barque's sexual involvement with Robert Sheets and C-44 but they might have also discovered other sexual and other inappropriate conduct of the probationer officer with additional probationers such as Albert Roy and C-45. Had criminal charges been laid against Mr. Barque at that time, the former probation officer would probably not have been able to later obtain positions working with children. As discussed, Mr. Barque was a social worker from 1982 to 1986 with Équipe Psycho-sociale, an agency involved with children and adolescents with mental health issues. In his position at Équipe Psycho-sociale, Mr. Barque interacted with children at two elementary schools in Cornwall and met privately with these children. As mentioned, Mr. Barque subsequently obtained a supply teaching contract for a year with the Conseil des Ecoles Séparées de Stormont, Dundas et Glengarry, in 1992.

In my view, the Cornwall Police Service failed to properly investigate the allegations made in 1982 that Cornwall probation officer Nelson Barque was engaging in sexual relations with probationers. Mr. Barque continued to interact with children and other young people at schools and at a mental health organization despite his admission that he had had sexual relations with probationers under his supervision.

Approximately twelve years later, in November 1994, Mr. Barque was once again brought to the attention of the Cornwall Police Service. Albert Roy, a former probationer of both Mr. Barque and Mr. Ken Seguin, alleged that he had been sexually abused by these probation officers while on probation in Cornwall in the mid-1970s. These disclosures were made to the CPS by Albert Roy one year after Ken Seguin committed suicide.

Albert Roy reported that Mr. Seguin had been his probation officer in 1977, when he was sixteen years old. He stated that after about three months, while Mr. Seguin was on vacation, Mr. Roy had been placed under the supervision of Mr. Barque. Mr. Roy stated that Mr. Barque had sexually abused him during this time. He said that when he reported the abuse to Mr. Seguin, this senior probation officer also began to sexually abuse him.

As mentioned in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services, Albert Roy had previously disclosed the abuse to his psychiatrist, Dr. Almudevar, and to a social worker, Bob Payette. He was encouraged to contact the Cornwall police regarding these allegations of abuse.

On November 24, 1994, Albert Roy was interviewed by Constable Heidi Sebalj of the Cornwall Police Service. Mr. Roy stated that he would have liked to be provided with emotional support while he discussed with the police these difficult and personal details of the sexual abuse.

Mr. Roy told Constable Sebalj about the repeated instances in which Mr. Barque had touched him inappropriately, which included incidents at the Cornwall Probation Office. He also discussed sexual activity that had taken place at Mr. Barque's home. The incident report filed by Constable Sebalj mentions only the incidents at Barque's home and not the inappropriate touching at the probation office.

The day after the interview, Constable Sebalj and Albert Roy went out together to try to locate Mr. Barque's home. Information from the Ontario Ministry of Transportation indicated that Mr. Barque's home was located in St. Andrews, which was within the jurisdiction of the Ontario Provincial Police. Because Albert Roy was unable to identify the probation officer's home, the Cornwall Police Service and the Ontario Provincial Police (OPP) decided to investigate the allegations jointly. This is further discussed in this Report in Chapter 7, on the institutional response of the Ontario Provincial Police.

Constable Sebalj obtained Mr. Barque's file from the Cornwall Probation Office as well as a copy of the Ministry of Correctional Services investigation concerning allegations of unprofessional conduct by Mr. Barque. She also contacted C-44, who said he did not want to be involved in a police investigation. Constable Sebalj interviewed Pierre Landry, Mr. Barque's former employer at Équipe Psycho-sociale.

Mr. Roy told Constable Sebalj that he was afraid to be in a room alone with a man. Nevertheless, several of the police officers involved in Albert Roy's case were men. Mr. Roy testified that he was never asked by these police officers whether he would prefer to deal with a female officer. Albert Roy was asked to meet with OPP Detective Constable Chris McDonell regarding another case that the officer was working on. Mr. Roy stated that Constable Sebalj did not adequately explain why he needed to meet with Constable McDonell.

Albert Roy provided Detective Constable McDonell with a statement on December 6, 1994, at Constable Sebalj's office, with essentially the same information regarding his abuse by Ken Seguin and Nelson Barque that he had provided to Constable Sebalj. Mr. Roy testified that he found Detective Constable McDonell's demeanour threatening and that during the interview it would have been apparent to Constable Sebalj that he was uncomfortable with the male OPP officer. As I state in the context of the investigation of the allegations of sexual abuse of David Silmsen, it is important that the police services develop a protocol to ensure that victims of childhood sexual abuse make their disclosures to and are interviewed by officers of the gender with which they feel most comfortable.

On December 14, 1994, OPP Detective Constable William Zebruck informed Constable Sebalj that he had arrested and charged Nelson Barque regarding the sexual acts allegedly perpetrated on Albert Roy. This ended the involvement of the Cornwall Police Service in this investigation. Constable Sebalj arranged a meeting between Albert Roy and Detective Constable Zebruck. Mr. Roy provided Detective Constable Zebruck with a statement on December 16, 1994. Mr. Barque pleaded guilty in July 1995 to the indecent assault of Albert Roy and received a sentence of four months custody and eighteen months probation. This is discussed in further detail in Chapter 7, on the institutional response of the Ontario Provincial Police.

Detective Wendy Leaver, an expert in the investigation of sexual offences and historical sexual offences, stressed the importance of ensuring that victims are as comfortable as possible during the interview process. Dr. Peter Jaffe, an expert in child sexual abuse, testified that taking multiple statements can be harmful to victims of historical abuse. Despite the fact that Constable Sebalj was aware Albert Roy was uncomfortable with men, she did not take measures

to ensure that he interacted with female police officers. Furthermore, Mr. Roy was asked to provide Detective Constables McDonnell and Zebruck with statements in which he repeated essentially the same information he had already provided to Constable Sebalj.

As part of the Albert Roy investigation, Constable Sebalj had met with C-44 on December 1, 1994. Initially he had refused to become involved, but after Nelson Barque had pleaded guilty to the indecent assault and gross indecency of Albert Roy, Constable Sebalj received a telephone call from C-44's adoptive father, who said his son should cooperate with the prosecution of Mr. Barque. On December 21, 1995, C-44 provided Constable Sebalj with an audiotaped statement regarding his allegations of historical sexual abuse by Nelson Barque.

Constable Sebalj wrote to Crown Attorney Murray MacDonald on February 7, 1996, to seek advice on C-44's allegations against Nelson Barque. She referred to the May 1982 report on Mr. Barque by the Ministry of Correctional Services and the statement by Mr. Barque in which he admitted to engaging in sexual activity with and providing alcohol to C-44. The Crown attorney forwarded these materials to the regional Crown, Peter Griffiths.

On February 27, 1996, Constable Sebalj met with Crown Attorney Murray MacDonald. Mr. MacDonald informed her that because C-44 was twenty-one years old at the time of the sexual activity and had consented to the sexual acts with Mr. Barque, criminal proceedings would not be successful. This will be further discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

A year later, in February 1997, another victim, C-45, provided Cornwall Police Constable René Desrosiers with a statement alleging that Nelson Barque and Ken Seguin had abused him when he was a probationer under supervision supervised at the Cornwall Probation Office. C-45 stated that he was in grade 10 at the time. Constable Desrosiers told C-45 that either the CPS or another force would look into the matter. However, Constable Desrosiers did not follow up to determine whether the Cornwall police or any other police agency was conducting an investigation, nor did he follow up with C-45 or the probation office with regard to this allegation of sexual abuse.

As will be discussed further in this chapter, the Ontario Municipal and Provincial Police Automation Cooperative, known as OMPPAC, became available to the Cornwall Police Service in July 1989. OMPPAC is an automated data entry and records management system. It was designed to permit the electronic recording of information.

Prior to 1989, the CPS relied on written reports for information on incidents reported and investigations conducted by the police service. Information was

recorded on contact cards. The cards contained contact information on the complainants, witnesses, suspects, and individuals charged with offences.

After OMPPAC was introduced, officers at the CPS were required to insert information such as incident reports and their respective investigations into the electronic system. The system permitted different searches to be conducted, such as the name of the perpetrator or victim or the incident number. Once the data was entered, CPS officers and officers in other police services that were members of OMPPAC could view the information. This enabled information to be shared within and between police forces. OMPPAC also had the capability of creating a “project file,” which was accessible only to designated officers.

As I repeatedly state in this chapter, it was important that Cornwall police officers promptly record on OMPPAC information about their files. Moreover, it was essential that officers who subsequently became responsible for such files check OMPPAC to obtain information on the history of a case such as the alleged victims, potential witnesses, persons interviewed, and other important information on the sexual abuse investigation.

Constable Desrosiers testified that he was not aware that Constable Sebalj had been involved in a previous investigation of Mr. Barque regarding allegations of abuse by probationer Albert Roy that resulted in plea of guilty by Mr. Barque to indecent assault on a male. As I discuss in this chapter, members of the Cornwall Police Service in this and other cases did not know the history of the involvement of other Cornwall officers with the alleged perpetrators of sexual abuse. It is critical that officers record and insert their notes of investigations into OMPPAC or other electronic databases to ensure that other police officers have access to this information. Moreover, it is essential that officers check the electronic databases to obtain information in each case.

In October 1997, C-45 contacted the OPP and provided Detective Constables Steve Seguin and Joseph Dupuis with a statement regarding his allegations against Nelson Barque. On June 18, 1998, the OPP took cautioned statements from Nelson Barque with respect to C-45 and Robert Sheets. As mentioned, Nelson Barque committed suicide ten days later, on June 28, 1998. The OPP involvement in this matter is discussed in further detail in the following chapter, on the institutional response of the Ontario Provincial Police.

The Cornwall Police Service should have followed up on the complaint of C-45 with regard to his allegations against Nelson Barque. Officers at the CPS should also have performed a database search for the name of the perpetrator to determine if Mr. Barque had been the subject of other, earlier ongoing investigations. The Cornwall Police Service did not conduct a thorough investigation of Mr. Barque regarding the allegations of sexual abuse perpetrated by this probation officer.

The Earl Landry Jr. Investigation

The Cornwall Police Service (CPS) first became aware in June 1985 of allegations of sexual abuse of young boys by Earl Landry Jr.

A complaint was made to the Cornwall Police Service by the mother of a boy who was an alleged victim. On June 24, 1985, Inspector Richard Trew received information that Earl Landry Jr., the son of the former police chief in Cornwall, had sexually assaulted a boy of about eight years old at King George Park. Earl Landry Sr. had retired as Chief of Police from the Cornwall Police Service the previous year, in April 1984.

Inspector Trew considered this a high-profile case. He decided to contact Cornwall Chief of Police Claude Shaver, that night at his home. At the morning management meeting at CPS the following day, Chief Shaver expressed concern about the Earl Landry Jr. case and wanted to ensure that experienced and highly qualified police officers were assigned to the investigation. He decided that Staff Sergeant Stanley Willis and Sergeant Ron Lefebvre should be responsible for the Landry Jr. investigation. Inspector Trew supervised Staff Sergeant Willis, who in turn supervised Sergeant Ron Lefebvre.

Staff Sergeant Willis had a personal relationship with Earl Landry Jr.'s brother Brian. Chief Shaver testified that although he did not know about this friendship at the time, it did not surprise him as the men were about the same age and Cornwall is a small community. He said that he considered this a "high priority" case and took a special interest in it because of its potential "negative effects on the Police Department." However, Chief Shaver did not consider it a possible conflict of interest, actual or perceived, for the Cornwall Police Service to investigate this case of child sexual assault by a former CPS police chief's son. The investigating officers assigned to the case by Chief Shaver, Staff Sergeant Willis and Sergeant Lefebvre, had both served under Chief Earl Landry Sr. Despite this, Chief Shaver stated that he "would never even consider going outside" to an external police force for this investigation. In my view, given that Earl Landry Sr. was the former police chief of CPS, that he had retired the previous year, and that most of the officers at CPS in 1985 had reported to him, Chief Shaver should have given serious consideration to asking an outside police force to investigate the child sexual molestation charges against Earl Landry Sr.'s son. To complicate the situation, Chief Shaver assigned Staff Sergeant Willis as an investigating officer on the case. This CPS officer had a personal relationship with the suspect's brother. And Chief Shaver had a personal relationship with Earl Landry Sr. and had known him since he was a child. Staff Sergeant Garry Derochie, who conducted an internal review of the investigation in 1999, testified that in hindsight, given that Earl Landry Jr. was the son of the former police chief and that CPS officers such as Staff Sergeant Willis were friends of Earl

Landry Jr.'s brother Brian, it would have been advisable for another police force to conduct the 1985 investigation. I agree. It was important, to avoid either an actual or perceived conflict of interest, that Chief Shaver request that an external police force investigate the allegations of abuse of children against the former police chief's son.

Sergeant Ron Lefebvre initiated the investigation on June 25, 1985, the date he was "called by Chief Shaver ... to report to his office."¹¹ He interviewed the child's mother that day as well as the alleged victim. The following day, Earl Landry Jr. was questioned by the CPS. The questioning took place in the police officer's lounge at the CPS.

Chief Claude Shaver Pays a Visit to Earl Landry Sr.'s Home

On June 26, 1985, Chief Shaver decided to drive to the home of Earl Landry Sr., the former Cornwall police chief. When Chief Shaver left the police station, Earl Landry Jr. was being questioned by CPS officers. Chief Shaver did not call Earl Landry Sr. in advance of this visit, nor did he inform the investigating officers that he was going to the former police chief's home to alert him to the allegations against his son. Chief Shaver testified that he decided to see Earl Landry Sr. because he had known him "since [he] was a little kid," he "felt badly for him," and he thought he should personally inform the former chief of his son's arrest.

Earl Landry Sr. was in his workshed when Chief Shaver arrived at the Landry home. Chief Shaver told Earl Landry Sr. that his son was being questioned at the police station for the alleged sexual molestation of a child. The former police chief was extremely surprised and became visibly upset. Chief Shaver said to Earl Landry Sr., "Chief, if you think that he didn't do it, I can arrange a polygraph in Ottawa." He told Earl Landry Sr. the names of the investigating officers on his son's case. He spent a few hours at Earl Landry's home trying to console him. His wife was very ill, and Earl Landry Sr. was worried about the effect this information about their son would have on her health.

When Claude Shaver gave his evidence at the Inquiry, he understood that it was inappropriate for him to visit Earl Landry Sr. to discuss his son's detainment and questioning at the police station. He said that in retrospect, he "probably should not have gone to see the father" and was aware that it could be perceived as a conflict of interest. He further said:

11. Note that Sergeant Ron Lefebvre did not testify at the Inquiry. A motion was made to excuse Ron Lefebvre from giving evidence due to medical reasons. The motion was granted on November 26, 2008.

I guess my heart overruled my head. Would I do the same thing today? No, and would advise people not to because it seems obviously when you put it under the scrutiny that we're under here ... it can be perceived badly or badly in the community if that happened ... I certainly concede the fact that I would make a different decision today than I did then.

In my view, it was clearly inappropriate for Cornwall Police Chief Claude Shaver to have visited the former chief's home to discuss with Earl Landry Sr. the police questioning of his son, Earl Landry Jr., regarding allegations of child sexual abuse.

When Earl Landry Jr. was being questioned at the police station, Sergeant Lefebvre asked the suspect whether he would be willing to take a polygraph test. Earl Landry Jr. agreed to undergo a polygraph test.

Earl Landry Sr. Contacts the Investigating Officer in His Son's Case: The CPS Investigation Ends

The morning following the visit from Chief Shaver, Earl Landry Sr. decided to contact Staff Sergeant Willis, the investigating officer at CPS on his son's case. Inscribed in Staff Sergeant Willis' notes at 6:55 a.m. on June 27, 1985, is the following:

Earl Landry Sr. called HQ to advise me that things were happening too fast. Earl Jr. is very nervous. He relates that for the present time he will not be going to Ottawa to take a Polygraph test. He states: Perhaps arrangements can be made later on.

It is clear that active investigation on this complaint of child sexual abuse ended the morning of June 27, 1985, immediately after the call from Earl Landry Sr. Despite the comment from Earl Landry Sr. that "[p]erhaps arrangements can be made later on" for a polygraph test for his son, there is no indication that the CPS investigating officer followed up on this. It is important to note that Earl Landry Jr. had initially agreed to take the polygraph test when he was detained and questioned at the police station. Had Chief Shaver not spoken to Earl Landry Sr., it is possible that Earl Landry Jr. would not have consulted his father and would have taken the polygraph test. The CPS investigating officers did not try to find other possible victims of Earl Landry Jr., such as children seen at the park with this alleged perpetrator. Nor were attempts made by CPS to conduct a joint investigation with the Children's Aid Society (CAS) on this case. It is note-

worthy that at this time the CAS and CPS were involved in joint investigations of other alleged perpetrators of abuse.

On June 27, 1985, Sergeant Lefebvre presented the results of his investigation to his supervisor, Staff Sergeant Willis. The child complainant, although the age of a grade 5 student, was in a lower grade. Sergeant Lefebvre stated in a CPS interview several years later that he did not have sufficient evidence to proceed with a charge against Earl Landry Jr. He was concerned about the mental capacity of the child and that there was no corroborative evidence. Earl Landry Jr. was not prosecuted for this alleged offence. No criminal charges were laid at this time against the former police chief's son for the alleged sexual acts with this young boy.

The Cornwall Police Service did not conduct a thorough investigation in 1985 into the allegations of child sexual abuse made against Earl Landry Jr. It is also clear that the CPS failed to properly supervise the officers involved in the investigation, such as Sergeant Ron Lefebvre.

Chief Claude Shaver testified that he met Assistant Crown Attorney Alain Ain a few weeks later at a social function. Claude Shaver stated that he did not know at this time that Sergeant Ron Lefebvre had concluded there were no reasonable and probable grounds to lay criminal charges against Earl Landry Jr. The case was discussed by the two men at this function. According to Chief Shaver, Alain Ain told him that there was insufficient evidence to proceed with a case against Earl Landry Jr. because the child victim was not capable of testifying as a result of his mental capacity.¹²

Another problem was the lack of contact with the Children's Aid Society by the CPS investigating officers. When Staff Sergeant Derochie reviewed the Earl Landry Jr. case several years later, he was unable to find an explanation for the failure to conduct a joint investigation with the CAS. As he acknowledged, it is possible that if the CAS and CPS had jointly investigated the Earl Landry Jr. case in 1985, other victims would have been identified. Instead, after a two-day investigation, the CPS decided not to pursue the matter. It was not until 1999, thirteen years later, that Earl Landry Jr. pleaded guilty to molesting five victims. One of those five victims was the eight-year-old boy in the 1985 case investigated by Sergeant Lefebvre.

In fact, the Children's Aid Society had relevant medical information regarding this case in 1985. A letter to the CAS stated that the boy's mother brought him to a medical clinic after he disclosed he had been sexually molested by Earl Landry Jr. It stated that the child:

12 . Alain Ain did not testify at the hearings on the institutional response of the Ministry of the Attorney General; he was deceased at the time of the Inquiry.

... was interviewed alone and confirmed without leading questions that on several occasions “about three times” Earl Landry attempted to penetrate him anally with his penis but “he only got in a little way.” “It hurt.” “It got wet with sticky stuff.” He did not attempt any other sexual activity ...

Physical examination revealed no abnormalities. His genitalia were normal and there were no anal fissures or evidence of trauma although on rectal examination he stated “it hurts like when Earl did it.”

As Staff Sergeant Derochie said, if the CPS had been aware of this medical letter, there would have been some evidence to corroborate the child victim’s statement.

When Staff Sergeant Derochie conducted his internal review of the 1985 Earl Landry Jr. case, he criticized the CAS for not entering Earl Landry Jr.’s name on the provincial suspected abuser registry. In addition, he was critical of the lack of a CAS file on Earl Landry Jr. In his 1999 report to Chief Anthony Repa, Staff Sergeant Derochie wrote:

- that there is no file on Landry at CAS, and that, although he should have been, he was never entered on the Province’s suspected abusers registry;
- that CAS caseworker Dupuy’s notes, which should be on file at their office, are not.

Other problems with the CPS case noted by Staff Sergeant Derochie in his report were the lack of notes by the investigating officer, Sergeant Ron Lefebvre, his supervisor, Staff Sergeant Willis, or the Crown attorney. He noted:¹³

- that Lefebvre’s notes cannot be found and may have been destroyed along with all reports dating back to 1985 as part of our scheduled destruction of records;
- that Staff Sergeant Willis recalls the investigation vaguely and would not have made notes;
- that the Crown Attorney has no file on this matter, it would have been destroyed long ago.

This was a pervasive problem in the Cornwall Police Service. Staff Sergeant Derochie found that record keeping was inadequate in several child sexual assault

13. Notes from Sergeant Lefebvre and some notes from Staff Sergeant Willis were later found and produced at the Inquiry.

cases, including the Landry Jr., Antoine, and Silmsen investigations. In his view, this appeared to be a systemic problem. I agree. The use of loose-leaf notebooks, the destruction of notes, poor note keeping, and inadequate supervision are deficiencies that are prevalent in these and other investigations of historical sexual abuse conducted by the CPS.

There was no discipline imposed, formally or informally, on any officers in relation to the Landry Jr. investigation. Sergeant Ron Lefebvre was not disciplined or counselled for his inadequate investigation in 1985 of the allegations of sexual abuse by Earl Landry Jr. Nor were disciplinary measures imposed on the officers who supervised the Landry Jr. investigation. Moreover, Chief Shaver was not subject to any measures for his disclosure of information to Earl Landry Sr. during the ongoing CPS investigation of Earl Landry Jr.

CAS Contacts the CPS in 1993: Another Disclosure by a Child of Sexual Molestation by Earl Landry Jr.

In 1993, further allegations of sexual abuse by Earl Landry Jr. were reported to the Cornwall Police Service. In September 1993, psychologist Dr. Wayne Nadler contacted the Children's Aid Society to report that a young male patient had disclosed that Earl Landry Jr. had sexually molested him. On October 22, 1993, CAS worker Pina DeBellis contacted Staff Sergeant Luc Brunet, the head of the Cornwall Police Criminal Investigation Bureau (CIB). Staff Sergeant Brunet was also the liaison person with the CAS. He was told about the disclosure by this male patient, who was about nine years old at the time of the alleged sexual abuse, which had occurred repeatedly for approximately a year. The unnamed patient had made it clear that he did not wish to pursue this matter with either the police or the CAS.

Ms DeBellis told Staff Sergeant Brunet that the Children's Aid Society wanted to investigate the matter. Earl Landry Jr. and his wife were foster parents for C-54, and the CAS was concerned. Staff Sergeant Brunet told Ms DeBellis that he was aware of the previous complaint against Mr. Landry in 1985 of sexual abuse of a young boy.

Staff Sergeant Brunet created an OMPPAC incident number for this file and a general occurrence report. He also did a Canadian Police Information Centre (CPIC)¹⁴ and an OMPPAC search. He had learned from the police records department that there was an incident of sexual assault for Earl Landry Jr. on June 24, 1985, and that no criminal charges had been laid. He arranged for Sergeant Ron Lefebvre, who had been assigned the 1985 Landry Jr. investigation, to speak to CAS worker Pina DeBellis.

14. The Canadian Police Information Centre is a computerized system that provides Canadian law enforcement agencies with information on crimes and criminals.

CAS supervisor Bernie Lamarche called Staff Sergeant Brunet on October 27, 1993, to discuss the case. Two days later, Ms DeBellis had a conversation with Staff Sergeant Brunet, who said he would try to contact the alleged victim from the 1985 investigation and initiate an investigation. For more than two years, however, Staff Sergeant Brunet did not work on the Landry Jr. investigation. In January 1996, he was contacted by CAS worker Carole Leblanc.

As Staff Sergeant Derochie wrote in his 1999 report, Earl Landry Jr. subsequently pleaded guilty to molesting C-54, who had been in his and his wife's foster care at the time of the allegations of sexual assault. Staff Sergeant Derochie also noted that the CAS, again, did not insert Earl Landry Jr.'s name into the Child Abuse Registry.

More Disclosures in 1996

On January 9, 1996, Carole Leblanc called the CPS about Earl Landry Jr. and spoke to Staff Sergeant Brunet, the CAS liaison officer. Ms Leblanc reported that a male, C-52, had disclosed to an addiction counsellor on November 29, 1995, that he had been sexually molested when he was a child by an employee of the City's Parks and Recreation Department. The victim was referred to the CAS, which identified the suspect as Earl Landry Jr.

Ms Leblanc stated that the victim had reported that he had been fondled and masturbated at King George Park between the ages of twelve and sixteen by Earl Landry Jr. He had been told by the alleged perpetrator that it was a rite of passage. The CAS had interviewed the victim on January 3, 1996, and had an audiotape of the interview.

Staff Sergeant Brunet created a general occurrence report and registered it on OMPPAC. He decided to assign the file to Constable Scott Hanton on January 10, 1996. Staff Sergeant Brunet gave no thought to the prospect of asking another police force to investigate the matter, which involved the son of a former Cornwall police chief. The Staff Sergeant briefed Constable Hanton on the 1985 complaint to the Cornwall Police Service and the allegation received in 1993 concerning Earl Landry Jr. Constable Hanton had no experience investigating historical sexual assault cases and was not part of the CIB. The Cornwall Police Service and Staff Sergeant Brunet should have taken measures to ensure that the officer assigned to the Landry Jr. case had training in investigating such cases.

As Staff Sergeant Derochie made clear in his report, "The case was bounced around from investigator to investigator for more than a year." Although Constable Hanton had carriage of the file in January, he asked Staff Sergeant Brunet if it could be assigned to the Youth Bureau/SACA in March. Staff Sergeant Brunet instructed the Constable to continue the Landry investigation. On April 5, 1996, Constable Hanton filed a supplementary occurrence report to the effect that he had

spoken to the victim, who did not want criminal charges to be pursued. Again Constable Hanton asked that the investigation be assigned to the Youth Bureau.

Staff Sergeant Brunet was not satisfied with the progress of the Landry investigation. He did not think it had been thorough. In May 1996, Staff Sergeant D'Arcy Dupuis, Constable Hanton's superior on uniformed patrol, told Staff Sergeant Brunet that the Constable would not be able to pursue the Landry Jr. investigation. On May 28, 1996, the investigation was reassigned to Constable David Bough, who had carriage of the file until September 1996. The police force at that time was preoccupied with homicide investigations, and this case of historical sexual assault was again pushed aside. Staff Sergeant Brunet knew that the Landry file was not being given the attention it warranted. Again, the file was bounced to another officer at the CPS. In September 1996, Sergeant Brian Snyder was assigned to the CIB and became responsible for the Landry file. I discuss Sergeant Snyder's involvement in this case in the next section. It wasn't until May 26, 1997, eight months later, that Earl Landry Jr. was interviewed. He was criminally charged, more victims came forward, and additional criminal charges were laid. Yet it wasn't until November 18, 1999, that Earl Landry Jr. was sentenced. He pleaded guilty to the criminal charges of sexual assault of five complainants and was sentenced to five years imprisonment.

As Staff Sergeant Derochie stated, it took far too much time to initiate the investigation after the 1996 complaint was made to the CPS. There was a backlog of cases at the police service, too many different officers had responsibility for the file, and the case did not progress in a timely manner. I agree with Staff Sergeant Derochie's conclusions.

Sergeant Brian Snyder Assumes Responsibility for Landry Jr. Investigation

Sergeant Brian Snyder became responsible for the Landry Jr. investigation on September 30, 1996. He was very aware of the need to conduct a comprehensive investigation without further delay. Sergeant Snyder knew that the file had bounced from one officer to the next and that little attention had been paid by the CPS to these allegations of historical sexual assault. Yet this complaint against Earl Landry Jr. by C-52 was again not investigated promptly. Sergeant Snyder's supervisors at the CPS should also have ensured that this case received priority and that it was investigated without delay.

Sergeant Snyder contacted Carole Leblanc of the CAS on February 12, 1997, and informed her that he was investigating the allegations by C-52. The CPS officer listened to the audiotape of the CAS interview. This was Sergeant Snyder's first contact with the CAS since he was assigned the file. But it was not until March 17, 1997, that Sergeant Snyder met with the alleged victim, C-52, to

discuss the details of the sexual assault by Earl Landry Jr. C-52 was upset about the delay in the investigation. Sergeant Snyder also spoke at about this time to another alleged victim, C-51.

On April 2, 1997, Sergeant Snyder met with the two complainants, and the CAS had a risk management conference to discuss whether Earl Landry Jr.'s employer should be contacted. Sergeant Snyder made contact with officials at City Hall, and Earl Landry Jr. was arrested at the end of May 1997.

On May 26, 1997, Sergeant Snyder met with Earl Landry Jr., who admitted the allegations made by C-52. Mr. Landry was arrested. Mr. Landry's release terms included a clause not to associate with C-51 or C-52, and another to stay away from public parks and facilities where persons under the age of fourteen might be found. A curfew was also imposed and Earl Landry Jr. was required to live at the home of his father. In addition, he was required to undergo an assessment. There were no restrictions on his interaction with his three young sons.

On June 17, 1997, Sergeant Snyder interviewed Earl Landry Jr.'s wife, Lucie. She told the officer that her husband had confessed that he had sexually abused eight or nine young people in the past, before criminal charges were laid. Lucie Landry said that he had molested vulnerable children. After the first set of charges, other victims came forward. The trigger for C-53's disclosure was media articles on the criminal charges that had been laid against Earl Landry Jr. There were additional charges against Earl Landry Jr. in 1997. C-54, another complainant, disclosed that he had also been abused, and more criminal charges were laid on September 3, 1997.

On September 5, 1997, Earl Landry Jr., accompanied by his aunt, arrived at the Cornwall Police Service and spoke to Sergeant Snyder. The accused told the CPS Sergeant that his mother and aunt had gone to see C-54 to ask why he was instituting criminal charges. Sergeant Snyder did not follow up with the complainant after he received this information from Earl Landry Jr.

It is clear in correspondence from Crown Attorneys Lynn Robinson and Murray MacDonald in 1997 and 1998 that the Crown had become exasperated with the inattention of Sergeant Snyder to the Landry file. Their concerns were non-response to letters, disclosure issues, and delays that they believed could negatively affect the success of the Landry prosecution. Crown Attorney Lynn Robinson discussed the perception of "ineptitude" in a memo to Murray MacDonald.

1. On 07 July 97 I tell investigator re: counselling records—I never receive a response.
2. 1 Oct 97—I follow up—no response.
3. 27 May 98—Receive more s. 278 documents dated May & June 97.

[Therefore] TWO CONCERNS

1. why no response to my letter?
2. if documents obtained a year ago—why only disclosed to Crown now?

WOULD YOU KINDLY ADDRESS THIS WITH SOMEONE
AT C.P.S. THIS ACCUSED IS EX-CHIEF'S SON & THE
APPEARANCE OF INEPTITUDE WILL NOT GO UNNOTICED
BY V'S & MEDIA.

A letter to Chief Repa by Crown Attorney Murray MacDonald on May 28, 1998, outlined some of the concerns:

Dear Sir:

You will recall a conversation we had several weeks ago on the subject of my bringing to your attention problems relating to particular officers. Likewise, you will recall our mutual desire of having an information “pipeline” between your desk and mine which is intended to educate members as opposed to sanctioning them (this is based on my philosophy that erring officers, like Crowns, make their share of mistakes over the course of time!)

The case at hand relates to a high-profile sexual assault currently being prosecuted by this office. The case is now before the General Division. The considerable delays in receiving and response will harm the Crown's case and cause unnecessary litigation over the complainant's personal records and related confidentiality interests.

My request, in a nutshell, is that Crown requests for relevant information be acted upon as quickly as reasonably possible. If, however, delays are anticipated (your folks are as busy as my people), then it will be helpful for the relevant members to contact the Crown immediately and arrangements can then be discussed. (Emphasis added)

It is clear from the evidence that Sergeant Snyder failed to conduct the investigation of Landry Jr. in a timely manner. Chief Repa responded to the Crown attorney's letter on June 9, 1998. He apologized for the breakdown in communication and assured Mr. Murray MacDonald that he had discussed these issues with his senior officers and would ensure that the matter was “given the attention deserved.”

Earl Landry Jr. Breaches His Conditions of Release and Is Arrested by Sergeant Snyder

Sergeant Snyder saw Earl Landry Jr. alone with his children on October 26, 1997, at McDonald's restaurant. Brian Snyder was off duty at the time. The CAS had stipulated that his wife, Lucie, could not leave the boys alone with Earl Landry Jr. and that any access to his children was to be supervised. Sergeant Snyder reported his observations to the CAS on the same day that he saw Earl Landry Jr. at the restaurant.

On June 25, 1998, C-54 told Sergeant Snyder that he no longer wished to pursue the criminal charges against Earl Landry Jr. Sergeant Snyder tried to determine why C-54 had changed his mind. He learned through the discussion that Earl Landry Jr. had offered C-54 a computer if the charges were dropped against him. In Sergeant Snyder's view, this was an obstruction of justice. Sergeant Snyder was also told that Earl Landry Jr. was staying overnight at his wife's apartment in breach of his recognizance.

On the evening of September 4, 1998, Sergeant Snyder travelled to the home of Mrs. Landry. He saw Earl Landry Jr. there, after the time of his curfew. This was in violation of the conditions of Mr. Landry's release. Sergeant Snyder contacted Earl Landry Sr., who said he did not know where his son was at that time. Sergeant Snyder arrested Earl Landry Jr. Both he and the Crown tried to revoke Earl Landry Jr.'s bail but were not successful.

Earl Landry Jr. pleaded guilty to the charges laid against him and received a custodial sentence of five years.

Staff Sergeant Garry Derochie Identifies Several Problems in the Landry Jr. Investigation

Staff Sergeant Derochie identified in his 1999 review several problems in the Earl Landry investigation that were also present in other historical sexual assault investigations at the Cornwall Police Service. They included delays in the investigation, case management issues in the CIB, poor note taking, and the short retention period of reports. Historical sexual assault cases, he concluded, were not considered high priority at the CPS:

... There does exist in this matter, however, a number of the same shortcomings previously identified in other historical sexual assault investigations.

Those concerns include:

—that notes were attached to completed investigative reports and so were destroyed at the end of the retention period of those reports;

- that occurrences/incidents which contained allegations of historical sexual assaults which could not be prosecuted or pursued, for any number of reasons, were classified as Police Information and so had a very short retention period;
- that historical sexual assaults were/are not pursued with a same type of urgency which recently occurring assaults were/are given;
- that case management issues in CIB remain unresolved and a continued source of concern.

Staff Sergeant Brunet agreed that note taking and retention periods for documents were inadequate. He also agreed that there were delays in the Landry investigation for which he was responsible.

I have to concede that I was trying to monitor it the best I could with the other cases that I had at the time and there were certainly some issues. *The end results is there were some delays, and I have to accept responsibility for that.* (Emphasis added)

As Staff Sergeant Derochie testified, the Landry Jr. investigation, the investigation of the Jeannette Antoine complaint, and the investigation of the Silmser complaint all suffered from the same deficiencies: case management problems, poor record keeping, and delay. These historical sexual abuse investigations had the same shortcomings.

At the conclusion of the December 1999 report, Staff Sergeant Derochie recommended that the Cornwall Police Service “develop policies in the form of General Orders which address the issues raised in this Review, both with regard to the investigation and the records keeping.”

Chief Repa responded to the Derochie report on the Landry Jr. investigation a few days later, on December 13, 1999. The Cornwall Chief of Police stated that the “highest priority must always be given to complaints of sexual assault or child abuse.” He instructed that the current policy on sexual assault procedure be updated to a General Order. He also directed that the following actions be taken to ensure a prompt response to complaints of child abuse and sexual assault:

- Until the Order is completed, a Standing Order is to be forthwith drafted that the aforementioned categories are to be immediately assigned for investigation and that a follow-up report shall be submitted every [fourteen (14)] days until the investigation is concluded, whether or not there is any activity.
- The Staff Sergeant and/or Sergeant assigned to the Criminal Investigation Bureau shall review and manage all of the categories to ensure that the files are being actively worked on.

- The Professional Standards/Audit Staff Sergeant shall audit the areas on a regular basis to ensure compliance.
- Ascertain if there is currently a backlog of cases and if so, whether the temporary secondment of staff to SACA would assist in the bureau becoming current.
- All allegations of sexual assault, sexual offences, child or elder abuse are to be referred to CIB, even though the Uniform Bureau may be assigned the follow-up or have cleared the matter.
- The Criminal Investigation Bureau manager and supervisor have responsibility for the case management of noted offences.

The reporting requirement on OMPPAC was extended from seven to fourteen and then to thirty days after a meeting with Chief Repa and Officers Garry Derochie, Luc Brunet, and Richard Carter, and D'Arcy Dupuis. As Staff Sergeant Derochie explained, this was to ensure activity so that historical sexual assault cases were treated with the same urgency and importance as other investigations. It is noteworthy that a thirty-day reporting requirement was the standard OMPPAC requirement for all cases. Therefore, cases of historical sexual abuse were not accorded priority.

On December 30, 1999, Chief Repa issued a Standing Order on the investigation of sexual assaults. It made clear that historical sexual assaults should be treated with the same priority as current sexual assault cases. It also delineated the responsibilities of the Criminal Investigation Bureau regarding case management, as well as monitoring the progress and timeliness of these files. The Professional Standards Bureau became responsible for conducting random audits of these cases:

STANDING ORDER INVESTIGATION OF SEXUAL ASSAULTS

Effective immediately the Officer in Charge of the Criminal Investigation Division will be responsible for the case management of all reported cases of:

- offences which are sexual in nature;
- child abuse; and
- abuse of the elderly.

Such investigations will be given the *highest priority* and shall be referred to the Criminal Investigation Division for investigation.

The investigating officer will report on the status of the case by means of a supplemental report every thirty (30) days.

The OIC of the Criminal Investigation Division shall closely monitor the progress of all such investigations and will ensure that they are completed in a timely manner.

Historical sexual assaults will be given the same considerations as those incidents which have just recently occurred.

The OIC of Professional Standards Division shall, in the capacity of Service Auditor, conduct random audits of such investigations.
(Emphasis added)

In 2002, the December 2000 General Order was amended. As Chief Repa explained, two important provisions were deleted: (1) the section that stated that historical sexual assault should be treated with the same urgency as current sexual assault cases; and (2) the section on random audits.

Staff Sergeant Snyder Has Contact With C-52 Prior to Testifying at the Inquiry

A few months before testifying at the Inquiry, Staff Sergeant Snyder¹⁵ went to the home of C-52, one of the complainants, on March 19, 2008, to discuss the Landry Jr. investigation. He was dressed in uniform. During this visit, Sergeant Snyder asked C-52 about the incident in which C-52 came to the police station to complain there had been little progress on the investigation. The CPS officer claimed he was trying to refresh his memory before he gave his evidence at the Inquiry.

Staff Sergeant Snyder testified that he did not in any way try to make suggestions or to influence C-52. He said that he had visited C-52 on his own initiative and did not consult anyone before arriving at C-52's home. Staff Sergeant Snyder claimed that it did not occur to him at the time that this visit was inappropriate or could be intimidating to C-52, a victim of child sexual assault. In hindsight, he acknowledged that it was a mistake to visit C-52's home, particularly in uniform, in preparation for his testimony at the Inquiry, which was examining the response of the Cornwall Police Service to allegations of sexual assault by victims in the community.

15. Brian Snyder was promoted to Staff Sergeant in November 2006.

Staff Sergeant Snyder made notes of his visit to C-52's home in March 2008. However, the CPS officer did not disclose these notes to the Inquiry until two weeks before he testified at the hearings. When asked to explain the time lag for the disclosure, Bryan Snyder replied, "There's no reason."

It is evident that Staff Sergeant Snyder was reluctant to disclose his notes of his visit and exchange with C-52 in March 2008. It was clearly inappropriate for the officer to make contact with C-52 and to visit the home of this victim of childhood sexual abuse to discuss the Landry Jr. investigation prior to testifying at the Inquiry.

Did the Former Police Chief Obstruct the CPS in Its Investigation of His Son Earl Landry Jr.?

In summer 2000, the Cornwall Police Services Board was named defendant in a civil action instituted by C-53's family. C-53, one of the victims of Earl Landry Jr., and members of his family instituted a legal action against the CPS as well as Earl Landry Jr., Earl Landry Sr., the City of Cornwall, and the Children's Aid Society. It was alleged in the statement of claim that the former police chief, Earl Landry Sr., abused his influence in the CPS to protect his son from being criminally charged with sexual assault. It was asserted that the CPS was aware of these actions and had a duty to protect the plaintiffs and members of the public.

On August 16, 2000, Chief Repa wrote a memo to Staff Sergeant Derochie, Head of the Professional Standards Division. He stated that the civil allegations "are serious and alleged conduct of a criminal nature." He directed Staff Sergeant Derochie to begin a criminal investigation immediately of Earl Landry Sr. and other involved members of the Cornwall Police Service "to ascertain the facts." Chief Repa was concerned about the allegation of attempts to obstruct justice by the CPS.

Chief Repa did not consider asking an external police force to conduct this investigation. It would have been appropriate for the Cornwall Chief of Police to refer this investigation to another police force to ensure objectivity. It was also important as members of the community in Cornwall could otherwise conclude that the CPS was attempting to cover up improper influence by the former police chief.

Staff Sergeant Derochie filed a general occurrence report in which he outlined the allegations against the CPS in the statement of claim filed by C-53's family. He was concerned that the former police chief, Earl Landry Sr., who had retired from the CPS in April 1984, had used his position to influence the police officers investigating allegations of sexual assault against his son. Staff Sergeant Derochie also knew that he needed to determine whether the CPS officers involved in the

criminal investigation of Earl Landry Jr. had acted inappropriately. He asked Staff Sergeant Snyder to assist him and appointed him lead investigator.

Staff Sergeant Derochie wrote to the lawyer representing C-53's family on August 24, 2000. He advised Mr. Arthur Lüst that, in light of the serious allegations of possible obstruction of justice set forth in the statement of claim, the "Cornwall Police Service had commenced a criminal investigation to ascertain the facts." Mr. Lüst responded by letter that he was surprised the CPS had not asked an external police force, such as the Ontario Provincial Police (OPP), to conduct this investigation but rather had decided to "investigate itself." His letter of August 30, 2000, reads:

Dear Mr. Derochie:

Re: [C-53] et al. v. Landry Jr. et al.
Your File: PROSTDSI (I-I)

I have received your letter of August 24, 2000 with some surprise.

To that end, I am curious as to why the Cornwall Police Service would investigate itself given the rather severe nature of the allegations put forward in the Statement of Claim. Surely, in this case, it is the Ontario Provincial Police that ought to investigate this matter if there are any facts to ascertain whether there is a potential for an obstruction of justice charge against any individuals linked with the Police Service in Cornwall.

Your thoughts on this matter would be greatly appreciated as I intend to move forward the action as it presently stands. Given the nature of the litigation, any interview of my clients cannot be utilized in the civil action in as much as your defence of the claim goes. It is for this reason, among others, I am somewhat surprised that it is the Cornwall Police Service that would initiate their own investigation in this matter.

Kindly advise me as to what your position is.

Arthur Lüst, esq.

Staff Sergeant Derochie and the CPS were in a possible conflict. The CPS was being sued and the Staff Sergeant was the contact person for the civil lawyers in defending the claim against the CPS. At the same time, Chief Repa had instructed him to conduct a criminal investigation of the issues.

The CPS did not ask the Ottawa Police Service, the OPP, or another external police force to conduct the criminal investigation into allegations of improper influence by Earl Landry Sr. and the possible involvement of CPS officers. Nor did the CPS seek the advice of the Crown regarding the possible conflict.

On September 15, 2000, Sergeant Snyder became involved in the investigation of the allegations of conspiracy and attempt to obstruct justice. He arranged interviews with victims and their families, as well as with CPS officers involved in the 1985 Earl Landry Jr. case. He also arranged to meet with employees of the Parks and Recreation department of the City of Cornwall. Sergeant Snyder, either alone or with Staff Sergeant Derochie, spoke to the following CPS officers: Stanley Willis, Richard Trew, Ron Lefebvre, and former chief Claude Shaver.

After completing these interviews over several months, Sergeant Snyder concluded that there was no evidence to suggest that there was a conspiracy to prevent Earl Landry Jr. from being charged with sexual assault. He concluded that both Staff Sergeant Willis and Sergeant Ron Lefebvre had conducted a proper investigation, that Crown Attorney Alain Ain had been consulted, and that it had been determined Earl Landry Jr. would not be criminally charged. They believed that the victim “had a great deal of difficulty communicating any information regarding the victimization due to various intellectual limitations” and “was not capable of giving adequate testimony.” Yet as I mentioned earlier, a medical report in 1985 stated that the child had described the sexual abuse without any leading questions.

Sergeant Snyder did not consider it inappropriate that the former police chief had contacted Staff Sergeant Willis respecting his son’s case. Moreover, Sergeant Snyder knew that Staff Sergeant Willis was a good friend of Earl Landry Jr.’s brother Brian. Sergeant Snyder also knew that the CPS investigation ended after the call by Earl Landry Sr. to the Cornwall police officer. It was also Sergeant Snyder’s conclusion that Chief Shaver did not obstruct justice by communicating with Earl Landry Sr. when the former chief’s son was being questioned by CPS officers. As I stated previously, it was clearly inappropriate for Chief Shaver to disclose information relating to an ongoing investigation of Earl Landry Jr. to his father, Earl Landry Sr., the former police chief of the CPS.

It is important to note that neither Sergeant Snyder nor Staff Sergeant Derochie interviewed Earl Landry Sr. in their 2000–2001 criminal investigation. After receiving the conclusions of Staff Sergeant Derochie and Sergeant Snyder in their report, that Staff Sergeant Willis and Sergeant Ron Lefebvre had not engaged in inappropriate conduct during the 1985 criminal investigation of Earl Landry Jr., Chief Repa decided that it was not necessary to interview the former police chief. In my view, the Cornwall Police Service ought to have interviewed Earl Landry Sr. in its investigation of whether the former police chief obstructed

justice or acted inappropriately in the police investigation of his son Earl Landry Jr. for allegations of sexual assault of young people.

Another Conflict of Interest?

Staff Sergeant Derochie became concerned in September 2000 about a possible conflict of interest with regard to the insurer of the CPS, which he discussed with Chief Repa. In notes dated September 5, 2000, Staff Sergeant Derochie wrote:

I told the Chief that in my opinion CGU Ins. & certain people at City Hall have reached the conclusion that the allegation made by the plaintiff, i.e. that Landry Sr. used his influence as Chief or former Chief to protect his son from being charged. If that is the case then we are at a point of conflict with them i.e. how can we be confident that CGU will represent our interests if they believe Landry Sr. was involved in some sort of mis-conduct. They can not accuse Landry Sr. without involving/accusing the investigators, which in turn would involve everyone else, i.e. Chief Shaver, Insp. Trew et al. I discussed this concern with the Chief and he agrees that we have a problem that I should consult a lawyer.

In September 2000, the insurance company was reluctant to pay the legal fees for Earl Landry Sr.

Chief Repa acknowledged that he had placed Staff Sergeant Derochie in a difficult and “contradictory” position. Staff Sergeant Derochie was responsible for the criminal investigation of possible obstruction of justice by Earl Landry Sr. Yet Chief Repa asked Staff Sergeant Derochie to prepare a report to urge the insurer to pay. Chief Repa stated that, in hindsight, he realized that he should not have asked Staff Sergeant Derochie both to conduct the criminal investigation and to write a report to the insurers urging them to pay Earl Landry Sr.’s indemnification costs:

It was not until a few months ago when I was reading all of the documents on this that I realized that I had put Staff Sergeant Derochie, unbeknownst to me—it was there, I saw it, but I didn’t see it—I didn’t appreciate the situation I had put him in. He was in a contradictory situation.

Had I appreciated back then in the summer of 2000 and the fall what I had done to Staff Sergeant Derochie by making him wear two hats, he’s

saying in essence to the insurance providers, Earl Landry Sr. is innocent and on this hand he's going out and trying to ascertain criminal—do a criminal investigation on him.

That was completely my fault. I didn't see it. I mean, I was aware of it but I just did not—it didn't hit me.

A few months ago when I realized what was happening, I realized I made an error.

In my view, the Cornwall Police Services Board failed to establish policies and failed to give direction to the Chief of Police to ensure that conflicts of interest were identified and appropriately managed within the context of investigations related to allegations of historical sexual abuse. In addition, Chief Repa and the Cornwall Police Service failed to take measures to ensure that conflicts of interest were identified and dealt with appropriately in the context of the investigation of allegations of historical sexual abuse by Earl Landry Jr. Furthermore, the Cornwall Police Service unreasonably delayed the investigation into allegations of sexual abuse made against Earl Landry Jr. It also failed to ensure that investigators had the appropriate training for cases of historical child sexual abuse.

The Investigation of Jean Luc Leblanc

Constable Brian Payment Assigned the Leblanc Investigation

On January 24, 1986, Staff Sergeant Stanley Willis asked Constable Brian Payment to investigate allegations of sexual abuse involving Jean Luc Leblanc. At that time, Mr. Leblanc worked as an instructor at the training institute at Transport Canada. Staff Sergeant Willis explained that the Children's Aid Society (CAS) had received a complaint and that the alleged child victim, Scott Burgess, was a student at a local Cornwall school, Central Public. Constable Payment, who at that time was in the Cornwall Police Service (CPS) Youth Bureau, went to the child's school that day. He was dressed in plain clothes.

At Central Public School, Constable Payment spoke to Bruce Duncan of the Children's Aid Society about the case. He was told that the alleged victim had disclosed to a teacher, Dawn Raymond, about two weeks earlier that he had been sexually molested by Mr. Leblanc. The student, Scott Burgess, did not want his parents to know about the sexual assault.

Constable Payment had intended to meet with the alleged victim, fourteen-year-old Scott Burgess. But when the CPS Constable arrived at the school, he was told by the Principal that he could not speak to the student without the consent of

his parents as it was contrary to school policy. Constable Payment explained to the Principal of Central Public School that in sexual abuse cases, it is important that the police interview the victim as soon as possible. Nevertheless, the Cornwall police officer was denied access to the student.

However, Central Public School authorities allowed the CAS official, Mr. Bruce Duncan, to speak to Scott Burgess. Mr. Duncan assured Constable Payment that he would contact him after the interview. Constable Payment was concerned that the child had disclosed two weeks earlier, yet the Cornwall police had not been contacted until this time. Constable Payment asked the CAS official not to discuss the details of the sexual assault case with the victim but rather to ask the child if he was willing to meet with a police officer. Scott Burgess was interviewed by Mr. Duncan on the afternoon of January 24, 1986.

As will be discussed in Chapter 9, on the institutional response of the Children's Aid Society, when Mr. Duncan met with Scott Burgess, he was told that Scott's brother, Jody, might also be a victim. Mr. Duncan decided to visit the Burgess home that afternoon. He met with Jody Burgess, who told the CAS intake worker that a man named Bill McKinnon had sexually molested his friend Jason Tyo and others. Jody Burgess did not disclose at that time that Mr. Leblanc had sexually abused him. Mr. Duncan spoke to Scott Burgess again, who revealed that acts of fellatio and anal sex had been perpetrated on him by Jean Luc Leblanc.

That evening, Constable Payment went to the CAS office. Scott Burgess had agreed to an interview with the police officer. Constable Payment discussed in his evidence the benefits of joint interviews with the CAS and the police. They spare the child victim multiple questioning. Also, the police can ensure that CAS officials do not ask the child leading questions, as this can adversely affect the outcome of a prosecution.

As discussed, Constable Payment had asked Mr. Duncan when he had his initial contact with Scott Burgess not to ask the child details about the alleged sexual assault. No protocol existed between the Children's Aid Society and the Cornwall Police Service at that time, and Constable Payment was worried that leading questions would be asked. As he explained in his testimony, a police officer and a CAS worker have very different objectives. CAS officials are focused on the protection of the child rather than on the success of a criminal prosecution. Yet despite the police officer's request, Bruce Duncan spoke to Scott Burgess about some of the details of the sexual assaults by Mr. Leblanc.

At the CAS office, Constable Payment interviewed Scott Burgess, who was in grade 7 at the time. He took a statement from him. Mr. Duncan was present. This was the third time that day that Scott was interviewed about the abuse. The child described acts of fellatio committed multiple times by Mr. Leblanc. He had been instructed by Mr. Leblanc not to disclose these acts to anyone.

Dawn Raymond, the woman to whom Scott Burgess had disclosed sexual activities with Mr. Leblanc, wrote a statement for the police at the CAS office at the time Constable Payment interviewed Scott. Dawn Raymond was a teacher at an elementary school in Cornwall, Gladstone Public School, and had taught Scott Burgess and Jason Tyo. The boys had begun to visit her at her home the previous summer and she “became more of a friend,” a person in whom the children would confide. The boys told Mrs. Raymond that Jean Luc Leblanc took them on trips, that they slept at his house, and that they had regular contact with him. She met Mr. Leblanc on December 21, 1985, when he offered to drive her to the airport. It was on about January 7, 1986, after she returned from her trip, that Jason Tyo came to her school and disclosed to Dawn Raymond that Mr. Leblanc had performed fellatio on and had anal sex with Scott Burgess. A few days later, Scott confirmed that he had been sexually molested by Mr. Leblanc. He also revealed that Mr. Leblanc had performed fellatio on Jason Tyo.

Constable Payment reviewed Dawn Raymond’s statement after his interview with Scott Burgess and asked her to sign it. Her statement clearly said that one of the child victims had told her that fellatio and anal sex had been perpetrated on Scott Burgess by Mr. Leblanc. Yet Constable Payment did not include the allegations of anal sex in the will-state of Scott Burgess. Constable Payment agreed that this was important information as it affected the criminal charges that could be laid against Mr. Leblanc. Other important information omitted in the will-state of Scott Burgess was about the trips that the child went on with Mr. Leblanc.

Interview at the Burgess Home

Constable Payment arrived at the Burgess home on the evening of January 24, 1986. He and Mr. Duncan spoke to Mr. and Ms Burgess about Scott’s disclosure and asked them to be supportive of their son. The officer and the CAS official explained that it is difficult for victims of sexual abuse to come forward. There were seven children in the Burgess family.

Constable Payment spoke with Jody Burgess in his bedroom. Jody told the officer that Mr. Leblanc was “his friend.” The boy described some acts of the sexual molestation, but it was evident that he was reluctant to discuss all the details of the abuse. Jody Burgess needed some time to decide whether he was comfortable disclosing more information to the police officer about Mr. Leblanc. Jody also mentioned a man, “Bill,” who sexually molested him and who had pictures of “many little kids.”

Constable Payment did not interview any of the other children in the Burgess home to determine whether they, too, had been subjected to sexual abuse by Jean Luc Leblanc. Cindy Burgess, Scott and Jody’s sister, was at home when

Constable Payment arrived that evening. She was in the kitchen at the time the CPS Constable spoke to Mr. and Mrs. Burgess and knew the reason for the visit by the Cornwall police. Cindy Burgess was fifteen years old at the time. When Constable Payment was asked at the Inquiry why he did not interview Cindy or other children in the Burgess household, his response was, “I don’t know if it’s tunnel vision, but it would seem at that time, that ... he was involved with boys.”

Constable Payment agreed that in retrospect, it would have been a good idea to speak to the other children in the Burgess home to determine whether they, too, had been sexually assaulted by Mr. Leblanc. Constable Payment learned several years later that Cindy Burgess was also sexually abused by this man.

As a result of the Ontario Provincial Police (OPP) investigation of Jean Luc Leblanc in 1999, Cindy Burgess was interviewed, as were her siblings Scott and Jody. Mr. Leblanc was subsequently prosecuted for a number of sexual acts committed on children and received a ten-year custodial sentence in 2002. I discuss Project Truth and the OPP investigation and prosecution of Mr. Leblanc in the following chapter of this Report. Clearly, both Constable Payment and the CAS ought to have interviewed other children in the Burgess household to determine if they had been sexually abused. I discuss the CAS involvement in this case in Chapter 9.

The day after Constable Payment visited the Burgess home, January 25, 1986, Jody Burgess decided that he was prepared to disclose more information to Constable Payment about the sexual activities engaged in by Mr. Leblanc. Constable Payment took a statement from the boy. Jody Burgess told the officer that once a week for a three- or four-year period, Mr. Leblanc performed fellatio on him. The officer learned that when Mr. Leblanc engaged in sexual activities with Scott or Jody Burgess or their friend Jason Tyo, the other boys were often present. Jody said that the sexual molestation by Mr. Leblanc stopped in October 1985, before Halloween. Constable Payment testified that he thought he had discussed with Jody Burgess the trips and overnight stays with Mr. Leblanc, but this information was also not included in the will-state of this child complainant.

On the same day, Constable Payment took a statement from Jason Tyo, the friend of the Burgess brothers. Jason Tyo was also a student at Central Public School. He disclosed acts of fellatio by Mr. Leblanc on him, Jody Burgess, and Scott Burgess. That day, Constable Payment decided to visit Bill McKinnon, as his name had been mentioned by the boys. He confronted Mr. McKinnon at his apartment, but the suspect denied he had been involved sexually with the children. Mr. McKinnon was seventy-one years old and appeared to Constable Payment to be somewhat senile and confused. When Constable Payment testified, he had no recollection of Bruce Duncan mentioning that Jody Burgess had disclosed that Mr. McKinnon possessed photographs of children.

Constable Payment testified that he met with the Crown, Don Johnson, on January 27, 1986. According to Constable Payment, Mr. Johnson read the statements of each of the three boys as well as the statement of Dawn Raymond. The case was discussed. It was agreed that a charge of gross indecency should be laid against Jean Luc Leblanc. Constable Payment did not recall any discussion with the Crown regarding information omitted from the statements, such as the trips and overnight stays at Mr. Leblanc's home and the anal sex mentioned in Dawn Raymond's statement.

Mr. Johnson and Constable Payment also discussed the allegations against Bill McKinnon and the possibility of a CPS investigation. According to Constable Payment, Mr. Johnson raised a concern about Mr. McKinnon's competency to stand trial—he was elderly and perhaps senile. Charges that could be laid against Mr. McKinnon were not pursued at this meeting.

It is of significance that Constable Payment failed to file an occurrence report on the allegations against Bill McKinnon. This prevented other police officers who received complaints against this man from linking him to the Burgess/Tyo allegations. When asked why he did not file an occurrence report, Constable Payment replied, “[I]t's something that I just never thought of at the time.” And he acknowledged, “In hindsight I probably should have made the occurrence.” The officer should clearly have filed an occurrence report to alert other police officers of the allegations of child sexual abuse by Bill McKinnon. Constable Payment did not investigate this matter further.

Charges Laid Against Jean Luc Leblanc

On January 27, 1986, charges of gross indecency were laid against Mr. Leblanc with respect to the acts of fellatio committed on Scott Burgess, his brother Jody, and Jason Tyo. The allegations spanned from 1981 to 1985. At that time, Constable Payment clearly understood the difference in the gravity of the offence between an act of fellatio and an act of anal intercourse, but no charges were laid with respect to the acts of anal intercourse. He knew that anal intercourse was considered more serious. Constable Payment conceded that had the statements of the complainants contained references to the anal sex, “there would have been other charges.” This was an omission on the part of Constable Payment that was likely to have had an impact on the sentence of Mr. Leblanc.

Constable Payment arrested Jean Luc Leblanc on January 27, 1986, and transported him to the police station. The accused refused to provide a statement. Mr. Leblanc contacted a lawyer, and he was released by Justice of the Peace Keith Jodoin. Of significance is that Mr. Leblanc's release did not contain a condition prohibiting him from communicating with the victims or other children and young persons. Constable Payment could not explain why he did not include

this but agreed that the release “definitely” should have included this condition. This omission was critical in terms of failing to protect young persons from this perpetrator. Mr. Leblanc continued to have contact with children.

When Mr. Leblanc returned to his home in January 1986 after his release, he asked Constable Payment why the children had spoken to the police. Constable Payment responded that the children must have felt uncomfortable and thought that Mr. Leblanc’s behaviour was wrong, to which Mr. Leblanc replied, “If they felt uncomfortable all they had to do was tell me not to do it any more and I would have stopped right away.” Constable Payment inscribed these words in his notebook; this was an inculpatory statement.

Constable Payment could not recall whether he contacted Jason Tyo or his family to let them know that charges had been laid against Mr. Leblanc. He thought he might have informed Mr. Burgess about the criminal charges but was not certain. No policy existed that officers promptly contact sexual assault victims or their families when criminal charges were laid against the alleged perpetrators. As Constable Payment acknowledged, “[U]nfortunately the police didn’t get back to some of the victims or their families often.” Interactions between the police and victims of childhood sexual abuse and their families clearly needed to be improved and addressed at the Cornwall Police Service. It is my recommendation that the Cornwall Police Service ensure that sexual assault victims—and in the case of child sexual assault victims, their parents, and family members—are apprised of the investigation, the laying of charges, and the court proceedings.

Constable Payment informed Bruce Duncan of the CAS about the Leblanc criminal charges. When Mr. Duncan called the Burgess home on January 28, 1986, the day after the Leblanc arrest, he spoke to Mrs. Burgess. According to Mr. Duncan’s notes:

—Jason has told Scott’s teacher and other kids at school. Scott has denied at school.

—Parents out last night for supper and *Jody was crying as detective told him Jean Luc broke down when they took him in.* (Emphasis added)

Constable Payment denied that he had any contact with the children at that time about the arrest. He denied discussing Mr. Leblanc’s “break-down” with the child victims when the perpetrator was arrested.

Jean Luc Leblanc’s trial took place on November 6, 1986. Mr. Leblanc pleaded guilty to two out of the three charges. The charge with respect to Scott Burgess was withdrawn at the request of the Crown. Mr. Leblanc received a suspended sentence and three years probation. Constable Payment was not involved in the plea negotiations. Nor was he in court on the day of the trial and only later learned of

the sentence and that one count had been withdrawn. Constable Payment had wanted the Crown to proceed on all three charges as he thought they were well founded. He was also concerned about the effect of the withdrawn charges on Scott Burgess. It would be difficult, he said, “explaining to him why his was dropped and not the others.” Yet Constable Payment does not think he contacted Scott Burgess to discuss the withdrawn charges. He thought that perhaps Bruce Duncan might have discussed the outcome of the Leblanc case with Scott Burgess. However, Scott Burgess testified that he had not been not contacted about the withdrawal of charges involving the sexual acts on him or Mr. Leblanc’s 1986 sentence. In my view, it is of great importance that victims and alleged victims of historical child abuse are informed by the police of the outcome of the proceedings against the perpetrator and the sentence imposed by the court. It is also critical that it be explained to such victims and alleged victims that the Crown must meet a high burden of proof in criminal prosecutions and that an unsuccessful prosecution does not mean that the abuse did not in fact occur.

The probation order issued to Mr. Leblanc again did not contain a condition prohibiting him from interacting or associating with the victims, children, or other young people. Constable Payment was not aware at this time that the probation order did not include this condition, which would have provided some protection to former victims of Mr. Leblanc or other children at risk of abuse by this man. In Constable Payment’s view, the probation order should have stipulated that the perpetrator have no contact with the victims or other young persons:

[I]n retrospect now that I’ve found out that he’s re-offended that maybe something should have—as in my release papers, I should have had the “no contact.”

Jason Tyo testified that he was abused by Mr. Leblanc after his 1986 conviction. Mr. Tyo further said in his evidence:

... I’m disappointed with the sentence there. A lot of things could have been avoided if he was sentenced properly then ...

Like if he was sentenced, like a more harsh sentence, he wouldn’t have been able to re-abuse or re-abuse myself if he would have been put into jail then or a little more than a slap on the knuckles he got ...

...

And again, not to be hypocritical, but for sure if he would have got sentenced harsher then, things in my life could be much different now, a lot different ...

Jean Luc Leblanc was charged and convicted of additional sexual offences as a result of the OPP investigation approximately twelve years later, in 1999.¹⁶ As mentioned, one of these was in relation to Cindy Burgess, the sister of Scott and Jody. Mr. Leblanc pleaded guilty to a number of sexual charges against children in the Cornwall area as a result of the Project Truth investigation, which I discuss in Chapter 7, on the institutional response of the Ontario Provincial Police. It was only when Constable Payment was preparing for his testimony at the Inquiry that he learned that Mr. Leblanc had been designated a long-term offender.

It is clear that the alleged victims of the Leblanc sexual abuse were not kept informed by the police of the progress and outcome of the 1986 prosecution. They were distressed to learn that Mr. Leblanc was not given a custodial sentence for the multiple acts of sexual abuse on them. Nor were they involved in the sentencing of the man who had sexually abused them in terms of input into the victim impact of the abuse. Moreover, they stated that had the Cornwall police kept in contact with them, they would have probably disclosed additional details about Jean Luc Leblanc and Bill McKinnon. Scott Burgess testified that he would have also disclosed his sister Cindy's abuse if he had been asked such questions in the CPS investigation:

COUNSEL: You've told us today that you didn't tell anybody back in 1986 that your sister, Cindy, was being abused by Jean Luc Leblanc too. Is that right?

16. As I discuss in the chapter on the institutional response of the Ontario Provincial Police, CPS Constable Tyo contacted OPP Detective Sergeant Randy Millar on September 10, 1998, to convey information on Jean Luc Leblanc. The CPS had received information in August 1998 from Mrs. Vivian Burgess, mother of Jody and Scott Burgess, that Mr. Leblanc had been seen with young boys in and around the Cornwall area. Detective Sergeant Millar testified that at that time he was supervising five or six detectives in investigations of serious criminal offences including homicides and robberies. Constable Tyo told Detective Sergeant Millar in the September 1998 call that Jean Luc Leblanc had been convicted of gross indecency in 1986, and was now in OPP jurisdiction. As I discuss in this Report in the chapter on the institutional response of the OPP, Detective Sergeant Millar did not direct officers under his supervision to conduct any surveillance of Mr. Leblanc at that time or follow up on the information relayed by Constable Tyo. Detective Sergeant Millar testified that he did not take any action with regard to the Leblanc matter at that time because his officers were involved in other investigations and they did not have the resources.

SCOTT BURGESS: Correct.

COUNSEL: *Do you remember if you were ever asked if she was being abused?*

SCOTT BURGESS: No, was never asked.

COUNSEL: *Back in 1986, did you know at that time that Cindy had been abused by Jean Luc?*

SCOTT BURGESS: Yes.

COUNSEL: *And how did you know that?*

SCOTT BURGESS: *He made us stand there and watch.*

COUNSEL: *So you actually witnessed her abuse.*

SCOTT BURGESS: *Correct.*

COUNSEL: ... [I]f somebody in 1986 had asked you the question “Has your sister, Cindy, ever been abused?”, what do you think you would have said?

SCOTT BURGESS: Yes.

COUNSEL: You would have told them?

SCOTT BURGESS: *I would have told them.* (Emphasis added)

Nor were these child victims offered counselling for the acts of sexual abuse repeatedly committed on them. The importance of police contact with victims of sexual abuse and of providing information on the progress of the investigation and prosecution as well as counselling and support are recommendations in this Report that should be implemented by police forces in cases of sexual assault of children, current and historical.

This was clearly not provided to the Burgess children and Jason Tyo. Moreover, other children in the Burgess household should have been interviewed by the Cornwall police. It is also evident that important information was missing from the will-states of the child victims. It is possible that if some of this information

had been included, such as the anal intercourse, Mr. Leblanc might have been convicted of other sexual offences and would have received a longer sentence. This would have helped ensure that he was not in contact with other children. In fact, as I discuss in this Report, Mr. Leblanc subsequently became a school bus driver and transported children in the Upper Canada School District. Chapters 7 and 11, on the institutional responses of the Ontario Provincial Police and the Ministry of the Attorney General, describe the charges, prosecution, and sentencing of Mr. Leblanc in 2001 and 2002 of sexual offences against multiple child victims. Mr. Leblanc was designated a long-term offender in 2002.

The Cornwall Police Service and the CAS ought to have ensured that they conducted joint interviews with all the child victims to minimize the number of interviews and trauma to the children. This was also important to the success of the criminal prosecution. In addition, the CPS and the CAS ought to have been in better communication to ensure that the children and their families received the necessary information and support during the investigation.

The Burgess children, Jason Tyo, and other children and young people were not adequately protected when Mr. Leblanc was released after his arrest before his trial. Nor were they protected after he served his sentence for sexually abusing Jody Burgess and Jason Tyo. Both the release and the probation order should have contained a condition that Mr. Leblanc not communicate or be in the company of the victims or young persons.

I have concluded from my review of the evidence that Constable Brian Payment failed to conduct a thorough investigation in the Jean Luc Leblanc case. It is also my finding that the Cornwall Police Service failed to properly supervise Constable Payment in the context of this investigation of child sexual abuse.

I discuss the CAS involvement in this case in Chapter 9, on the institutional response of the Children's Aid Society.

The Marcel Lalonde Investigation

Constable Kevin Malloy had been assigned to the Youth Bureau of the Cornwall Police Service (CPS) for only about five days when he became responsible for the Marcel Lalonde investigation. When Constable Malloy contacted C-60, one of the alleged sexual assault victims, on January 9, 1989, this was the officer's first sexual assault investigation. He was assigned this file by Staff Sergeant Brendon Wells. Constable Malloy had never received any training in sexual assault investigations when he was transferred to the Youth Bureau in January 1989.

When Constable Malloy spoke to C-60 on January 9, 1989, this alleged victim of Marcel Lalonde stated that he had been "lured to culprit's house by alcohol—woke up—culprit performing copulation on him." He told the CPS officer that he

had been fifteen years old at that time. C-60 made it clear to Constable Malloy that he did not want to testify at Mr. Lalonde's trial in the event that the teacher was criminally prosecuted.

C-57, another alleged victim, asserted that he had been sexually assaulted by Marcel Lalonde, whom he had met at a community theatre group. He told Constable Malloy in an interview on January 10, 1989, that Mr. Lalonde had fondled and performed fellatio on him at a crew party at Mr. Lalonde's home after the play. C-57 said that he had consumed a significant amount of alcohol when Mr. Lalonde asked him to take off his trousers, that he had protested, but that he ultimately did comply with the perpetrator's request.

Marcel Lalonde was a teacher at Bishop Macdonell School. C-57 was sixteen years old and in grade 10 when he was allegedly sexually assaulted by Mr. Lalonde. In this January 1989 interview, Constable Malloy learned that C-57 came from a unfortunate family situation and that Mr. Lalonde was sympathetic and offered assistance to help this teenager resolve his problems. C-57 looked up to and trusted this adult figure. As Constable Malloy inscribed in his notes:

Problems with family life—parents fighting constantly. Father is an alcoholic. Went to culprits house to “escape.” Suspect looked up to as an adult he could trust & help him with problems. Impressed by the fact an adult would treat him as an equal.

Mr. Lalonde, a teacher, had provided alcohol to a sixteen-year-old, a minor. This violated the *Liquor Licence Act*. Constable Malloy acknowledged that this raised questions for him at that time.

C-57 told the CPS Constable that a similar situation had occurred two weeks later. Again, after C-57 had consumed a large amount of alcohol, Mr. Lalonde fondled him and engaged in sexual acts with the teenager. Mr. Lalonde instructed C-57 not to disclose any of these encounters to anyone.

During the course of the police interview, C-57 mentioned that C-60 had been at Mr. Lalonde's house as well as another person (C-59), who was a busboy at Jack Lee's Bar at the time. This person told C-57 that he had also been intoxicated and fallen asleep at Mr. Lalonde's house. The busboy woke up to find Marcel Lalonde grabbing him. C-57 also said that Mr. Lalonde wanted to take pictures of him and that there was an album at Mr. Lalonde's house with photos of nude males.

C-57 believed he could identify some of the other young men at Marcel Lalonde's home at that time. He was asked to look at yearbooks at the police station and identified two young boys, whom Constable Malloy testified were

probably C-65 and C-63. Constable Malloy's interview notes of January 10, 1989, state:

Culprit had moved to Millville Ave—victim attended by invitation and saw 2 males—in his backyard—told victim they were two of his students. They were enjoying themselves, calling him Marcel, drinking beer.

Mr. Lalonde was an elementary school teacher. If these were two of his students, they were young boys. It was unusual to call a teacher by his first name, and these two boys were certainly under the legal age to drink alcohol. Despite learning this, it did not enter Constable Malloy's mind that perhaps he should contact the Children's Aid Society (CAS) to report a reasonable suspicion of abuse.

C-57 stated that the perpetrator had moved to Millville Avenue, and he named the community theatre group. C-57 told Constable Malloy that he wanted the Cornwall police to conduct an investigation and that he was prepared to proceed with the complaint.

Constable Malloy came to the conclusion that based on C-57's interview, there were not reasonable and probable grounds to criminally charge Marcel Lalonde. In the Constable's view, C-57 had consented to the sexual acts:

... [I]n my mind, it was a consent issue. It was a seduction with alcohol and a consent to act.

...

... [H]e voluntarily did the things that Lalonde asked him to do. And I don't—it was my personal opinion that he wasn't that intoxicated to allow that to happen.

C-57 explained to Constable Malloy that he had not reported the abuse to the police for the past eight years because he had difficult life circumstances, which involved both alcohol and drug problems. He had sought treatment and was now prepared to deal with his childhood trauma. Constable Malloy agreed at the hearings that this was a sound reason for waiting this number of years before disclosing the abuse to the police.

Constable Malloy also learned in this interview that the prime motivation for the disclosure by C-57 was his concern for the vulnerability of other children

or youth who came into contact with Marcel Lalonde. C-57 was worried that they, too, could become victims of sexual abuse. The document in the CPS file stated:

Although the victim is perfectly willing to testify in court against the culprit, and to relate this incident, *his prime motivation is to prevent the culprit from preying upon other confused youths, and using his position of authority to gain their trust.* (Emphasis added)

Constable Malloy followed up with C-58, another alleged victim of childhood sexual abuse, who provided a statement to the Cornwall police officer. It was clear to the Constable that there were similarities in the sexual assault allegations of C-57 and C-58. C-58 also stated that he was intoxicated at the time he was sexually abused. He said that he had passed out at Mr. Lalonde's home and when he woke up, his pants had been removed. Mr. Lalonde told him that he had performed fellatio.

Constable Malloy also tried to contact C-61. He called his home and spoke to C-61's mother, who informed the officer that her son was away at university and was writing exams.

C-65 was another person who was interviewed by Constable Malloy in January 1989 in connection with the Marcel Lalonde investigation. C-65 was aware of the alleged perpetrator's sexual preferences. However, C-65 claimed that he had not been sexually assaulted by Mr. Lalonde. It was evident to Constable Malloy that C-65 was highly anxious during the interview and was very uncomfortable discussing these matters with the Cornwall police officer.

On January 13, 1989, Constable Malloy sought permission from his supervising officer, Staff Sergeant Wells, to extend his report date on the Lalonde occurrence. In correspondence, Constable Malloy wrote that the "case involved possibly four victims of sexual assault"; in addition to C-57, other potential victims were C-60, C-61, C-58, and C-65. Constable Malloy said that he needed to investigate the matter further.

Constable Kevin Malloy Contacts the Crown

It was not Constable Malloy's practice to consult the Crown before deciding whether to lay criminal charges against an individual. Staff Sergeant Wells confirmed in his testimony that this was not a typical practice at the Criminal Investigation Bureau (CIB) at the time. Nevertheless, Constable Malloy contended that he needed legal direction from a Crown attorney in the Lalonde case. The Constable did not have experience in historical sexual assault cases. Although

in his opinion there were no probable and reasonable grounds, he wanted confirmation from Crown Attorney Don Johnson. It is noteworthy that Constable Malloy did not consult his colleagues or supervisor at the Cornwall Police Service on this issue. Constable Malloy had no recollection of meeting with either Staff Sergeant Wells or Inspector Richard Trew.

Constable Malloy contacted Don Johnson and met him at the Crown office. According to Constable Malloy, Mr. Johnson shared the view that this was a consensual act and that there were no reasonable and probable grounds to lay a criminal charges against Marcel Lalonde. Constable Malloy also said that he discussed with the Crown the prospect of obtaining a search warrant of Mr. Lalonde's home to retrieve photographs the teacher had of young unclothed persons. According to Constable Malloy, the Crown attorney told him that there were no grounds to obtain a search warrant. Don Johnson testified that he has no recollection of this meeting or of such discussions with Constable Malloy. The involvement of the Crown in the Marcel Lalonde case is further discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

It seems that Constable Malloy met with the Crown before he had completed his interviews with the alleged victims. According to the officer's notes, he met with Mr. Johnson on January 10, 1989. Constable Malloy claimed that he had a second meeting but there is no record of this second meeting.

Constable Malloy testified that he did not prepare a Crown brief for Mr. Johnson, he did not take any notes at the meeting, and the Crown did not send him any written correspondence regarding these discussions. Yet he claimed that he spoke to Don Johnson more than one time. Mr. Johnson again could recall no such discussion with Constable Malloy.

When he testified, Constable Malloy agreed that there is no issue of consent when young persons are sexually molested when they are asleep. The Cornwall police officer also agreed that it was his, not the Crown's decision, whether reasonable and probable grounds existed to lay a criminal charge against Mr. Lalonde for sexually abusing young persons.

After Constable Malloy interviewed the alleged victims and witnesses mentioned above, he did not contact the CAS or the school at which Marcel Lalonde was a teacher in order to protect children who might be at risk of sexual abuse. Nor did he contact the community theatre at which Mr. Lalonde was involved with these youths.

The Lalonde File Is Placed in Abeyance

On June 22, 1989, Constable Malloy asked his supervisor, Staff Sergeant Wells, if the Lalonde file could be placed in abeyance for a short time as he wished to

interview the “suspect.”¹⁷ Staff Sergeant Wells gave the officer permission to place the file in abeyance. Constable Malloy testified that he was hoping word would get out that people in the community were making these allegations about Marcel Lalonde and that more victims and witnesses would come forward. As Constable Malloy said at the hearings, “It’s Cornwall, a small city; word travels fairly quickly.” The CPS Constable was hopeful that new evidence would emerge in the Lalonde case regarding these historical allegations of sexual abuse of young persons. This file, for which Constable Malloy was responsible, remained in abeyance when he went on sick leave almost four years later, in March 1993.

Constable Malloy remained on sick leave until May 1996. It seems obvious that when officers are away on such extended sick leave, their files should be reviewed and reassigned to other officers. The Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) had been operational for a number of years and this file should have come to the attention of Cornwall Police Service officers.

The alleged perpetrator, Marcel Lalonde, was never interviewed by Constable Malloy. As I discuss in this chapter, Constable Malloy also did not interview the alleged perpetrator in another sexual abuse investigation, the Antoine case. This officer, with no training in sexual assault investigations, who had been in the Youth Bureau for a very short time before he was assigned these complex cases of historical sexual abuse, made the decision not to interview the suspect and not to pursue the investigation in the hope that over time more victims would contact the Cornwall police. Clearly his lack of training, experience, and supervision are reasons why this file simply sat in a box in Constable Malloy’s office for years. Marcel Lalonde continued to teach and had contact with young children at Bishop Macdonell School. Yet Constable Malloy did not contact the elementary school or the Children’s Aid Society. Although he was unclear about his obligation to inform other agencies or employers about this case, he did not discuss this issue with his supervisors in the Youth Bureau.

As I discuss in the following pages, Marcel Lalonde was charged in 1997 and subsequently convicted years later for committing sexual offences against young persons. A search warrant was conducted and pictures of nude young people were found in Mr. Lalonde’s home. Marcel Lalonde was criminally charged eight years after Constable Malloy had been assigned the Lalonde file in 1989. C-58 was one of the victims/complainants in the 2000 criminal prosecution.

It is clear that Constable Malloy failed to conduct a thorough investigation into the allegations of sexual abuse made against Marcel Lalonde. Constable Malloy was never sanctioned or disciplined by the Cornwall Police Service for his

17. A file placed in abeyance was not closed, but no further work was pursued on the case.

inadequate investigation of allegations of childhood sexual abuse committed by Mr. Lalonde.

In 1989, Constable Malloy had information on the alleged sexual assaults from C-57, who was prepared to proceed with the case. He also had a statement from C-58 and information from C-60. There were several potential victims of abuse known to Constable Malloy in April 1989, who included C-57, C-58, C-59, C-60, C-65, and a boy identified in the yearbook. Constable Malloy agreed that in historical sexual assault cases, it is important for the investigating officer to develop a rapport and a trust relationship with the victim. The more the victim feels comfortable with the officer, the more likely he or she will provide details of the alleged criminal offence and agree to testify if criminal charges are laid. Constable Malloy acknowledged that there were common elements in the stories of these victims, for example, alcohol consumption by the young males, some of whom were sexually assaulted when they were asleep. Yet Constable Malloy decided to put the file in “abeyance until further evidence comes in.” He stated:

... I was asking that the file be placed in abeyance in the hopes that evidence would be forthcoming, people would ... the word would get out or somebody would come forward and say I want to file a complaint and I'm willing to take part in the process.

Staff Sergeant Wells testified that June 22, 1989, appears to be the last time he was involved in the Lalonde investigation. He was unaware that Constable Malloy had not interviewed “the suspect,” Marcel Lalonde. Nor did the CPS supervisor know that Constable Malloy did not undertake any further investigation after filing the June 22, 1989, supplementary occurrence report asking that the file be placed in abeyance for a short period. Staff Sergeant Wells testified that this should have come either to his attention or to that of Inspector Trew, who shared supervision duties: “Inspector Trew or myself were together the check and balance system.” They had equal responsibility to ensure that incidents like this were followed up. Yet it is evident that the “check and balance system” did not operate as it should have in the Marcel Lalonde case.

Staff Sergeant Wells agreed that because this was Constable Malloy's first case in the CIB and his first historical sexual assault investigation, the Constable should have received guidance and been actively supervised during this police investigation. For example, follow-up with potential witnesses and victims, contact with members of the theatre group, and an interview with the alleged perpetrator are some of the issues that could have been discussed with Constable Malloy in the context of this investigation. Staff Sergeant Wells agreed that perhaps the fact that he and Inspector Trew had shared responsibilities had complicated the supervision of Constable Malloy in the Lalonde investigation.

Staff Sergeant Wells also agreed that if Constable Malloy did not take further action on this file after it was placed in abeyance, this was not proper police file management. It is possible, he testified, that this file fell through the cracks.

As discussed, the Lalonde investigation for which Constable Malloy was responsible in 1989 remained in abeyance when he went on sick leave in March 1993. Staff Sergeant Wells agreed that it was the responsibility of Constable Malloy's supervisors, of which he was one, to keep abreast of the Lalonde and other files of Constable Malloy when the officer went on sick leave and when he left the Youth Bureau.

Marcel Lalonde continued to teach and have contact with young children until he was arrested in 1997.

In my view, the Cornwall Police Service failed to conduct a thorough investigation in 1989 into the allegations of sexual abuse made against Marcel Lalonde. Moreover, Staff Sergeant Wells and Inspector Trew failed to properly supervise Constable Malloy in the investigation of the allegations of historical sexual abuse against Marcel Lalonde. Because of the inattention to the file and the failure to contact the CAS and the school, children continued to be at risk of abuse by Mr. Lalonde.

CPS Learns of Allegations of Historical Sexual Abuse of David Silmsner by His Teacher, Marcel Lalonde

On August 9, 1994, Staff Sergeant Luc Brunet received information from the Ontario Provincial Police (OPP) that in the course of the Project Blue CAS investigation,¹⁸ David Silmsner had alleged that his former teacher at Bishop Macdonell School had sexually abused him. Detective Inspector Tim Smith of the OPP wrote a letter to Acting Chief Carl Johnston with this information, which was then conveyed to Staff Sergeant Brunet. The CPS Staff Sergeant learned that Mr. Silmsner had disclosed this information to CAS staff Greg Bell and Pina DeBellis several months earlier, on November 2, 1993. David Silmsner testified that he had been abused by his teacher, Marcel Lalonde, at Bishop Macdonell School when he was thirteen or fourteen years old. He stated that Mr. Lalonde took him to his home in Cornwall and sexually abused him on two occasions.

Staff Sergeant Brunet was not aware that the Cornwall Police Service had previously investigated allegations of sexual abuse of other victims by Marcel Lalonde.

It was Staff Sergeant Brunet's practice to check OMPPAC and the Canadian Police Information Centre (CPIC) in such circumstances. Although he did not

18. The Project Blue investigation will be discussed in Chapter 9, on the institutional response of the Children's Aid Society.

record this, the Staff Sergeant believes that he accessed both OMPPAC and CPIC to see if Marcel Lalonde's name appeared. He testified that he could not find any information on the suspect. Mr. Lalonde remained a teacher in Cornwall at that time.

Staff Sergeant Brunet contacted the CAS on August 9, 1994. He spoke to Mr. Lorenzo Murphy the following day and asked him to send the CAS interview of David Silmsers to the Cornwall police. Staff Sergeant Brunet followed up on this request by sending a letter to Mr. Murphy. On August 24, 1994, Staff Sergeant Brunet again contacted the CAS and spoke to Executive Director Richard Abell. The Staff Sergeant received a cassette and transcript of the interview two days later, which had been dropped off by Mr. Abell at the CPS front desk. Staff Sergeant Brunet was the liaison person with the CAS. At no time had he been advised by the Children's Aid Society of the November 1993 Silmsers allegations of abuse by his former teacher, Marcel Lalonde. As he said in his evidence, "The first time I was made aware of this is when Chief Johnston sent me the letter from [OPP] Inspector Smith in August" 1994.

Staff Sergeant Brunet testified that he did not contact the school or School Board at that time because Detective Inspector Smith stated in his correspondence with Acting Chief Johnston that the OPP had suggested to the CAS that it advise the School Board of these allegations against the teacher. But Mr. Bell of the CAS did not provide assurance that the agency would contact the School Board. According to the July 1994 correspondence, Mr. Bell told the OPP he would consult his superiors on this issue. Detective Inspector Smith wrote: "Mr. Bell advised me he would consult with his Supervisors and pass on my comments before any decision would be made to contact the School Board."

On September 12, 1994, Staff Sergeant Brunet sent David Silmsers a letter asking him to meet. Mr. Silmsers had called Acting Chief Johnston a few days earlier to let him know that he did not intend to provide a statement regarding Marcel Lalonde as he was worried it would end up in the media. This had been Mr. Silmsers's previous experience, after his disclosure to the CPS of his allegation of sexual abuse by Father Charles MacDonald and probation officer Ken Seguin. The letter sent by Staff Sergeant Brunet asked whether Mr. Silmsers would consider "providing full disclosure of the allegation against Mr. Marcel Lalonde to another police agency that could independently investigate the complaint." Mr. Silmsers did not respond to this letter.

After a couple of months had passed, Staff Sergeant Brunet decided to close the file. He considered David Silmsers uncooperative for failing to pursue the allegations of abuse and for failing to provide further particulars to the police. This is unfortunate because in February 1994, David Silmsers provided a statement to the OPP regarding his allegation of abuse against Marcel Lalonde. Staff Sergeant Brunet was not aware of this.

In my view, it is important that officers investigating such cases receive training in order to fully comprehend the impact of historical child sexual abuse and the impediments to disclosing details of such abuse to the police. Moreover, Mr. Silmser had contact with the Cornwall police in 1992 and 1993 regarding his allegations of sexual abuse by Father MacDonald and Ken Seguin, which had been difficult for him. He was also very upset that his statement to the police had been divulged to the media.

On December 13, 1994, Staff Sergeant Brunet advised Bill Carriere of the CAS that the CPS was “closing the file until Mr. Silmser was ready to discuss the case.” Staff Sergeant Brunet wrote the following in the general occurrence report:

At this time, it is obvious that Mr. Silmser made a general allegation of being sexually assaulted by Mr. Marcel Lalonde. He did not give any details that would allow our service to pursue the matter any further. Mr. Silmser has refused to cooperate with C.A.S. & the Cornwall Police Service. He was provided the opportunity to deal with another agency and has failed to pursue that avenue. S/Sgt. Brunet feels that everything possible has been done to pursue this complaint but without cooperation of the victim, no further action can be taken.

After discussions with Acting Chief Johnston, Staff Sergeant Brunet placed the general occurrence report of the Silmser allegation of abuse by Marcel Lalonde in a project file. This prevented other members of the Cornwall Police Service as well as other police forces from accessing this information on allegations of child sexual abuse by Mr. Lalonde.

Further Allegations of Abuse Made by Victims of Marcel Lalonde

In October 1996, Constable René Desrosiers was asked by his supervisor, Sergeant Brian Snyder, to follow up on a disclosure of abuse made by C-68 to probation officer Sue Lariviere. At that time, C-68 was in custody at the Cornwall jail. Constable Desrosiers was not aware that the Cornwall police had received complaints of abuse in the past and had conducted a previous investigation of allegations of sexual assaults of youth by Marcel Lalonde.

When they investigated the Lalonde allegations in 1996 and 1997, neither Constable Desrosiers nor his supervisor, Sergeant Snyder, knew that Constable Malloy had investigated this matter in 1989. Constable Desrosiers testified that he had checked the CPS cards but saw no record pertaining to Marcel Lalonde. The CPS officer did not know that Constable Malloy had documents relating to alleged victims of Lalonde in a box at the Cornwall Police Service. Clearly, it was of great importance that Constable Desrosiers, Sergeant Snyder, and other officers

involved in the Lalonde investigation, including other police forces, had knowledge of and access to documents and material relating to the allegations of abuse by this perpetrator. As is evident in my review of other CPS investigations, this was a serious problem.

Constable Desrosiers met with Ms Lariviere, who stated that C-68 had disclosed that he had been sexually abused when he was twelve years old and in grade 7 at Bishop Macdonell School in the late 1960s, by his teacher, Marcel Lalonde. He alleged that the sexual abuse by Mr. Lalonde had occurred repeatedly.

Constable Desrosiers went to the Cornwall jail to discuss these allegations with C-68. The alleged victim disclosed that the abuse had taken place on camping trips. Because the alleged acts had occurred outside the City of Cornwall and within the jurisdiction of the OPP, Constable Desrosiers contacted the OPP at the Lancaster Detachment and spoke to Constable Joe Dupuis. He also spoke to Mr. Kevin Linden at the Stormont, Dundas & Glengarry Roman Catholic Separate School Board. Ms Lariviere had previously contacted the School Board to alert Mr. Linden to the allegations of sexual abuse. Constable Desrosiers explained to Mr. Linden that the OPP would investigate this matter.

Constable Desrosiers subsequently learned that the OPP laid charges against Marcel Lalonde in 1997 for the alleged abuse of C-68.

On January 31, 1997, Constable Desrosiers received a call from C-45 and his brother, who lived in the Ottawa area. C-45 disclosed that both he and his sibling had been sexually assaulted by Marcel Lalonde. The two brothers met with Constable Desrosiers on February 3, 1997.

C-45's brother told Constable Desrosiers that Marcel Lalonde had been his teacher in grade 8 at Bishop Macdonell School. He alleged that Mr. Lalonde had fondled and performed fellatio on him at the teacher's home. He had been given alcohol. Mr. Lalonde, he stated, took pictures of him with a Polaroid camera and had a box of pictures. He also mentioned "Father Charles," but Constable Desrosiers made it clear that this interview was confined to allegations against Marcel Lalonde and that another police officer or police force would investigate the allegations against the priest. Unfortunately, the victim's allegations against the priest were not recorded in Constable Desrosiers notes. When C-45's brother subsequently testified at Father MacDonald's preliminary inquiry, he was challenged for not disclosing this information to the Cornwall Police Service. This is discussed in further detail in the following chapters of this Report. Constable Desrosiers claimed that he briefed his supervisor about the allegations regarding Father Charles MacDonald but could not recall if it was Sergeant Snyder.

Constable Desrosiers also interviewed C-45 on February 3, 1997, and took a statement regarding his allegations of sexual abuse by Mr. Lalonde. Marcel Lalonde was also his former teacher. Similar to the other alleged victims,

Mr. Lalonde had invited C-45 to his home and had offered him alcohol. C-45 became intoxicated, passed out, and woke up to find Mr. Lalonde performing oral sex on him. This alleged molestation was repeated. C-45 said that he also saw Polaroid photos of Mr. Lalonde's former students, nude. C-45 recognized some of the students in the pictures. C-45 took the photo of himself from Mr. Lalonde's home.

In the interview with Constable Desrosiers, C-45 also mentioned probation officers Nelson Barque and Ken Seguin. C-45 alleged that when he was in the Cornwall Probation Office for a pre-sentence report, Mr. Ken Seguin and Mr. Nelson Barque had engaged in sexually inappropriate behaviour. Constable Desrosiers told C-45 that the CPS or another force would investigate the allegations against Nelson Barque. This did not, however, occur. He also told the complainant that probation officer Ken Seguin was dead and that as a result, the police would not pursue this matter. When this disclosure was made, Constable Desrosiers did not know that Mr. Barque had been criminally charged and had pleaded guilty in 1995 to sexual acts involving Albert Roy. Again, Constable Desrosiers claimed that he advised his supervisor about the allegations against Mr. Barque. However, the Constable did not follow up with other officers in the Cornwall Police Service or the OPP regarding the allegations that had been made against these probation officers. Once again, this is unfortunate because C-45's allegations connected Nelson Barque, Ken Seguin, and Marcel Lalonde. This information was clearly significant and important to include in a linkages analysis.

Sergeant Brian Snyder's Involvement in the Lalonde File

On January 28, 1997, Detective Constable Don Genier of the OPP informed CPS Staff Sergeant Brunet that other victims had come forward after learning that Marcel Lalonde had been charged with sexual assault. One of the alleged victims was C-8. Staff Sergeant Brunet assigned the matter to Sergeant Snyder, who was briefed on February 4, 1997, regarding the complaints. Sergeant Snyder learned that the OPP had a video of Marcel Lalonde with C-8, which Detective Constable Genier brought to Sergeant Snyder on March 13, 1997. Sergeant Snyder was aware that Marcel Lalonde had a connection with David Silmsers, another alleged victim.

Sergeant Snyder informed Constable Desrosiers at that time that he was also working on an investigation of Marcel Lalonde. He asked Constable Desrosiers to assist him. Sergeant Snyder gave Constable Desrosiers four or five names of other alleged victims and asked the Constable to follow up with these individuals. The OPP was also investigating allegations of sexual abuse by Marcel Lalonde.

This is further discussed in Chapter 7, on the institutional response of the Ontario Provincial Police.

Constable Desrosiers pursued his investigation with respect to C-45 and his brother in 1997. He held a photographic line-up to ensure that the former teacher could be identified. He asked the complainants to identify the different homes of Marcel Lalonde at which they had been abused. Constable Desrosiers also went to City Hall to identify the owner of the home in which Mr. Lalonde was living. The Constable was trying to establish grounds for a search warrant of Mr. Lalonde's residence.

Sergeant Snyder tried to contact David Silmsen through his wife, Pam Silmsen, on February 18, 1997. Mr. Silmsen made it clear, through his spouse, that "he does not believe he can deal with it right now," he had "too much on his plate," and was "having a hard time and wants to get through the MacDonald case first." After his call with Pam Silmsen on February 19, 1997, Sergeant Snyder did not follow up with David Silmsen regarding his allegations against Marcel Lalonde.

C-8 informed Sergeant Snyder in an interview on March 3, 1997, that he had given a statement to Perry Dunlop in January 1997.¹⁹ C-8 told Sergeant Snyder that Perry Dunlop had typed his statement for him.²⁰ Sergeant Snyder contacted Perry Dunlop at his home to request C-8's original statement. Problems with disclosure of Perry Dunlop's notes and other material are discussed later in this section, as well as in the chapters on the institutional response of the Ontario Provincial Police and the Ministry of the Attorney General.

Sergeant Snyder also made contact with alleged victim C-66 in early March. C-66 provided a statement on March 17, 1997. He stated that Mr. Lalonde, a teacher at his school, had sexually assaulted him. C-66 said that Mr. Lalonde had encouraged him to come to a specific location by asking him if he was interested in a bicycle. C-66 alleged that the assault took place in a garage.

It is very clear that Sergeant Snyder did not record his notes in a proper manner. The CPS officer left blank lines between his notations and blank lines at the end of the page. He used a loose-leaf notebook. Sergeant Snyder should have been inscribing his notes on each line and should have ensured that there were no blank lines on each page of his notes. Sergeant Snyder agreed that his practice of missing lines was not acceptable. He could not provide an explanation for such note taking and acknowledged in his evidence that this was not the "best practice" because other people "can fill in blanks."

19. Perry Dunlop was a CPS Constable but was absent from the force from January 1994 to May 1997.

20. C-8 was a former student of Marcel Lalonde.

C-58 was another alleged victim with whom Sergeant Snyder spoke in the last two weeks of March 1997. It is clear that Sergeant Snyder did not have information from Constable Kevin Malloy's 1989 investigation. When he testified, Sergeant Snyder said he couldn't recall if he had checked the card catalogue to obtain information on Constable Malloy's investigation of Mr. Lalonde several years earlier. Sergeant Snyder did not know that C-57 and C-58 had disclosed to Constable Malloy that they had been abused by Mr. Lalonde. C-58 was a victim whom Sergeant Snyder had in fact interviewed. Yet the CPS officer was not aware that C-57 and C-58 had both alleged that they had been given alcohol and that C-57 had asserted that Mr. Lalonde had a photograph album.

Sergeant Snyder agreed that it would have been useful to have this information about Constable Malloy's 1989 investigation of Marcel Lalonde in his investigation of the same alleged perpetrator in 1997.

Marcel Lalonde Is Arrested

It was on April 29, 1997, that Marcel Lalonde was arrested by Constable René Desrosiers and Sergeant Snyder. On the previous day, Constable Desrosiers had obtained a search warrant of Mr. Lalonde's home, which he executed the same day as the arrest.

Constable Desrosiers and Constable George Tyo found five photo albums in the bedroom of Mr. Lalonde's home. Many of the pictures from a Polaroid camera were of teenagers who appeared to be between the ages of fifteen and seventeen. They were drinking alcohol in Marcel Lalonde's home but they were clothed. There were photographs of both C-45 and C-48. Five photos of nude young persons were found, three of which were of the same male posing on a couch. CPS Constable Desrosiers thought that this nude male was over eighteen years old.

Constable Desrosiers notified the OPP of the arrest and of the seizure of the photo albums in Mr. Lalonde's home. OPP officers also examined the photos. The OPP had charged Mr. Lalonde with indecent assault a few months earlier, in January 1997. This is discussed in Chapter 7, on the institutional response of the Ontario Provincial Police. Constable Desrosiers prepared a list of the young people identified in the photographs and tried to contact them. Some of these individuals did not want to participate in criminal proceedings against Mr. Lalonde. No additional charges were laid.

After the arrest, Constable Desrosiers and the Crown assigned to the case began to receive disclosure requests from Marcel Lalonde's defence counsel. At this time, Sergeant Snyder delegated the entire file to Constable Desrosiers. Sergeant Snyder was Constable Desrosiers' supervisor.

The preliminary inquiry was held in January 1998. It dealt with both the CPS and the OPP charges against Marcel Lalonde. Constable Desrosiers was called as a witness at the preliminary inquiry.

Constable Perry Dunlop was called by the defence to give evidence. Several months earlier, Sergeant Snyder had asked Constable Dunlop to give him relevant material in his possession. Sergeant Snyder had given Constable Desrosiers on April 29, 1997, a statement from Constable Dunlop of the information he had, which had been placed on OMPPAC. Constable Desrosiers assumed Perry Dunlop had provided all relevant information.

It became evident at the preliminary inquiry that Constable Perry Dunlop had not disclosed all the documents in his possession, including those pertaining to C-8. Crown Attorney Claudette Wilhelm asked Constable Desrosiers to obtain from Perry Dunlop all notes, newspaper clippings, and relevant documents. This is discussed further in Chapter 11, on the institutional response of the Ministry of the Attorney General.

Adjournment of the Lalonde Trial

The Lalonde trial, originally scheduled for February 1999, was adjourned to October 4, 1999. The matter was further adjourned in October due to disclosure issues. A few days before the scheduled trial, Mr. Lalonde's lawyer, William Markle, sought disclosure of the notes of two meetings that Perry Dunlop may have had with C-8 on September 11 and December 12, 1996.²¹

Staff Sergeant Garry Derochie, who was in the Professional Standards Bureau, was alerted to this on September 30, 1999. He considered this an urgent matter. He instructed Constable Desrosiers and Staff Sergeant Brunet to follow the chain of command and to obtain disclosure from Constable Dunlop. At that time, Sergeant Garry Lefebvre was Constable Dunlop's immediate supervisor.

Staff Sergeant Derochie understood that "disclosure had been a continuous problem":

... [A]t the end of the day, I wasn't confident that we had or we knew all of what Perry had; he, from time to time, mentioned that he had a wall of documents or boxes of documents at home and I thought it was—it was well now the time to find out exactly—what he had in these boxes.

On October 4, 1999, the date scheduled for the Lalonde trial, Constable Desrosiers learned that the defence was seeking a further adjournment because it had not

21. It is important to note that in October 1997, Constable Dunlop gave material to the OPP. Included in this were notes made by Constable Dunlop of contact with C-8. However, the CPS did not receive from the OPP the notes it had received from Constable Dunlop. During the Lalonde investigation, the OPP and CPS made separate disclosures to the Crown. Constable Desrosiers testified that he was not aware of the contents of the documents the OPP disclosed to the Crown in the Marcel Lalonde investigation.

received complete disclosure of documents in the possession of Constable Dunlop. The adjournment was granted and a new trial date was set for September 11, 2000.

Such delays were of great concern to Staff Sergeant Derochie. As he said in his testimony, “[T]his is an unnecessary delay”; the accused has a “right to a speedy trial” and the Staff Sergeant was worried that a “Charter argument” by defence counsel might be successful when the matter was again before the courts.

On October 4, 1999, Staff Sergeant Derochie met with CPS Staff Sergeant Carter and Crown Attorney Claudette Wilhelm at the Project Truth offices. Ms Wilhelm expressed her frustration regarding disclosure of the Lalonde material. She had no confidence that the Crown had received all the documents from Perry Dunlop. She told Staff Sergeant Derochie that she could not say to the defence with any certainty that she had made full disclosure. Garry Derochie wrote the following in his October 4, 1999, notes: “There is concern by all involved in this particular prosecution as well as others that Dunlop’s past and continued involvement in these matters may have severe consequences.”

Constable Dunlop was “speaking with other witnesses” and “taking statements” from them. Staff Sergeant Derochie considered this highly “improper.” He was very concerned that Perry Dunlop’s conduct could be fatal to the prosecutions against Marcel Lalonde.

Staff Sergeant Derochie told the Crown prosecutor that he would issue specific orders to Constable Dunlop to comply with the disclosure requests. Staff Sergeant Derochie’s notes state:

... [H]e [Dunlop] will be further instructed that Crown alone will determine what materials are relevant, not himself ... [H]e will also be told that he must stop investigating, privately, these criminal allegations ...

Staff Sergeant Derochie had never before encountered an officer who was conducting such investigations off duty and who refused to fully disclose his interview notes and documents. Constable Dunlop’s behaviour in conducting such off-duty investigations without the authority of his supervisors at the CPS is discussed in fuller detail in this Report.

On October 5, 1999, Constable Desrosiers learned that a CPS investigation of Mr. Lalonde had taken place in 1989. Constable Desrosiers understood that this material was also subject to disclosure. While it is evident that Constable Dunlop’s lack of disclosure may have caused some disruption in this case, once Constable Malloy’s investigation finally came to light it was subject to immediate disclosure and would have been a primary reason for the request to adjourn the trial.

Staff Sergeant Derochie had read the transcript of the preliminary hearing at which Constable Dunlop had testified and the defence counsel's disclosure request, and he thought there might be perjury. As Staff Sergeant Derochie inscribed in his notes of October 6, 1999, "I believe that he may have committed perjury and that he was obstructing justice by not making full and complete disclosure of notes and other evidence."

Staff Sergeant Derochie decided to seek the opinion of a Crown lawyer regarding Perry Dunlop's conduct. He was concerned about the "optics" of the Cornwall Police Service rather than an external police force conducting an investigation of Constable Dunlop in these historical sexual assault cases. As Staff Sergeant Derochie said at the hearings:

I wanted to get the opinion of a Crown on how I should proceed. These were, as we both agreed, unusual circumstances.

There had also been some concerns expressed to us that whatever we did, if we decided to go down this route, that it may—we should not investigate it ourselves, that we should seek a referral to another police department to do that. That it would be viewed—the optics of it wouldn't be good if we were doing the investigation on Perry Dunlop given our history with him.

Staff Sergeant Derochie contacted Mr. Marc Garson, Director of Crown Operations, West Region. In his notes, Staff Sergeant Derochie wrote, "reason for meeting is to get his opinion on how we, CPS, should begin the invest. into Dunlop's involvement with the Lalonde matter, and to express our concerns about the impact Dunlop is having on Project Truth."

Staff Sergeant Derochie met with Mr. Garson on October 29, 1999, and in a letter on November 19, 1999, the Crown lawyer set out his legal opinion. He made it clear that Constable Perry Dunlop was not part of the investigation team responsible for the prosecution of Marcel Lalonde. Despite repeated instruction by the CPS, Constable Dunlop continued to communicate with complainants and to speak publicly about the Lalonde investigation. Mr. Garson also discussed the testimony of Perry Dunlop at the preliminary inquiry of Marcel Lalonde in January 1998, in which Constable Dunlop under oath told the court that he had turned over all his notes in his investigation to the police. Yet this was not the case. Mr. Garson discussed the constitutional obligation of the Crown to make full disclosure and the accused's right to make full answer and defence under section 7 of the *Charter of Rights and Freedoms*. He advised the officer responsible for the Lalonde investigation to meet with Perry Dunlop and to instruct him to hand

over all his material connected to the Lalonde matter. If he failed to comply, judicial review before a judge should follow. Mr. Garson was clearly concerned about the impact of Mr. Dunlop's behaviour:

As Constable Dunlop is neither an investigating officer nor a witness to this proceeding, it is our view that his continued involvement in interviewing witnesses, seeking out additional information and discussing the case in a public forum while it remains pending before the courts, may result in undue harm to the due and proper administration of justice.

Mr. Garson also made it clear that an external police agency, not the Cornwall Police Service, should conduct a criminal investigation into the Dunlop matter regarding the "apparent inconsistency" between Perry Dunlop's evidence at the preliminary inquiry and the "subsequent disclosed materials":²²

You have also brought to our attention the apparent inconsistency between the testimony of Constable Dunlop at the preliminary hearing in January 1998 and the subsequent disclosed materials provided from the request. Our preliminary observation in this matter is that it would be a potential conflict for your police service to commence any form of criminal investigation into this matter given the history of events that have occurred. Accordingly, should you decide that this issue merits such investigation, we would recommend that you contact an external policing agency to conduct same.

Staff Sergeant Garry Derochie Meets With Cornwall Police Chief and the OPP: Ottawa Police Contacted

After receiving the Crown's letter, Staff Sergeant Derochie had a meeting with Chief Anthony Repa on November 26, 1999.

Staff Sergeant Derochie told Chief Repa that, in his view, Constable Dunlop may have misled the court and given perjured evidence at the Lalonde preliminary inquiry. In the officer's view, this warranted an investigation. Furthermore,

22. Note that Mr. Garson said that it was not within the Crown's mandate to give advice regarding the action to be taken by the police service in dealing with Constable Dunlop: "You have requested our advice on the action that should be taken by the police service in dealing with the conduct of Constable Dunlop. It is not within our mandate to advise the police on issuing orders or directives to officers nor is it appropriate for us to comment on the applicability of the Police Services Act to the specific conduct of an individual officer. Our opinions are limited to legal advice on issues pertaining to the criminal investigations and prosecution of persons charged with an offence."

there was also evidence to suggest that Constable Dunlop “may have conducted himself in a similar manner during the Charles MacDonald preliminary hearing in Ottawa.” Staff Sergeant Derochie recommended that an external police force investigate the possible criminal conduct of Constable Dunlop. He stated that Constable Dunlop had named as defendants in a civil action the Cornwall Police Service and several senior police officers. He was concerned there could be a potential conflict of interest if the CPS conducted the criminal investigation. Chief Repa agreed with the recommendations of Staff Sergeant Derochie.

In a meeting with Chief Repa, OPP Inspector Pat Hall, and Staff Sergeant Derochie, the purported concerns of Crown Attorney Robert Pelletier regarding Constable Dunlop’s testimony in the Father Charles MacDonald preliminary inquiry in late 1997 were also discussed. The charges and criminal prosecution involving Father Charles MacDonald are described in the following chapters in this Report.

In discussions with Chief Repa, Staff Sergeant Derochie raised the misconduct of Constable Dunlop in breach of the *Police Services Act*. Constable Dunlop was disobeying Inspector Trew’s 1997 order²³ and he continued to meddle in criminal investigations in which he had no official role.

In December 1999, Chief Repa asked Chief Brian Ford of the Ottawa-Carleton Regional Police Service to investigate Constable Dunlop on the following two issues:

1. The first matter involves the apparent inconsistency between the testimony of P.C. Dunlop at a preliminary hearing held in Cornwall in January 1998 and written material which was subsequently disclosed to the Crown Attorney.
2. The second matter relates to information received from OPP Detective Inspector Pat Hall, lead investigator for Project Truth. It is his information that Ottawa Crown Attorney Robert Pelletier has concerns relative to P.C. Dunlop’s conduct at a preliminary hearing which was held in Ottawa late in 1997 or early 1998.²⁴

In July 2000, Chief Repa received a letter from Sergeant Rolland Lalonde of the Ottawa-Carleton Regional Police Service. After the investigation of Constable Dunlop had been completed, it was concluded that there was no reasonable

23. Inspector Trew had ordered Perry Dunlop to disclose to the OPP his notes, tapes, statements, and other information on the alleged victims of sexual assaults. This is discussed further in this Report.

24. Crown Attorney Pelletier’s concerns about Constable Dunlop will be discussed in the chapter on the institutional response of the Ministry of the Attorney General.

prospect of conviction of Constable Perry Dunlop for perjury. Sergeant Lalonde indicated in the letter that Crown Marc Garson had said that “to prove perjury would be extremely difficult due to recent case laws on corroboration and we would have to prove Dunlop’s intention to mislead the court. It is Mr. Garson’s opinion that there was no reasonable prospect of conviction.” Criminal charges, therefore, were not laid against Perry Dunlop.

Staff Sergeant Derochie’s Orders to Constable Perry Dunlop in January 2000

On January 10, 2000, Staff Sergeant Derochie, after consulting the Crown and CPS legal counsel, issued orders to Constable Dunlop on disclosure of all evidence in his possession related to the Marcel Lalonde investigation conducted by OPP Project Truth, the CPS, or other police agencies. There were prohibitions on communicating with any victim or witness in the Lalonde criminal proceedings, as well as with the media and the public:

1. You shall disclose to Assistant Crown Attorney Claudette Wilhelm any and all evidence in your possession that in any way relates to the Marcel Lalonde investigation, including but not limited to any notes, documents, statements, reports, photographs, video/audiotapes that you have made or received and computer printouts of all information recorded on computer hard drive or disc that you have access to or may have used. Your disclosure will include a will say statement detailing all meetings with complainants, witnesses and any other involvement you may have had in this prosecution.
2. You shall disclose to OPP Project Truth or any other investigating police agency, including the Cornwall Police Service, any and all evidence in your possession that in any way relates to allegations of sexual abuse that is or may be investigated by such police agency. Evidence referred to in this order includes but is not limited to any notes, documents, statements, reports, photographs, and/or video/audio tapes you may have made or received and computer printouts of all information recorded on computer hard drive or disc that you have access to or may have used. Your disclosure will include a detailed will say statement describing all meetings with complainants, witnesses and any other involvement you may have had in those investigations.
3. You shall not communicate directly or indirectly with any victim or witness to the Marcel Lalonde criminal proceeding, any Project Truth or other similar criminal proceeding to which you are or may be named as a witness. If you are contacted by any victim or witness in any of

the above prosecutions, you will not discuss the case, you will make detailed notes of such contacts in your duty notebook and you will forthwith disclose, to the officers in charge of the case in question, any such contacts. For the purpose of these orders, the officers in charge are, for Project Truth—Detective Inspector Pat Hall of the Ontario Provincial Police and for all others, Acting Inspector Richard Carter of the Cornwall Police Service.

4. You shall not communicate directly or indirectly with any member of the public or the media regarding the subject matter of this order or your involvement in any criminal proceedings. You remain subject to the provision contained in Cornwall Police Service Directive Number 59, *Media Release and News Release Policy*.
5. You shall cease and desist from investigating any criminal activity that may be the subject matter of the OPP Project Truth investigation while on or off-duty. Any complaints brought by an individual to your attention shall be transferred forthwith to OPP Project Truth. Where the jurisdiction of Project Truth is inapplicable, an OMPPAC incident shall be created, a report submitted to the Cornwall Police Service and direction sought from your supervisor regarding your continued involvement. You shall make detailed notes, of all such contacts and referrals, in your duty notebook.
6. Effective on the issuance of these new orders, all previous orders issued to you relative to these matters are hereby rescinded and you will be subject to these new orders until advised otherwise.

Constable Dunlop was required to sign this document, which he did on January 17, 2000.

This was the first and only time in his police career that Staff Sergeant Derochie had issued orders of this nature.

Everything was unique about this. The whole—I've never run into anything like this in my entire career, starting from 1993 onwards.

This was a—this is a unique, unique situation. You shouldn't have to order police officers to provide disclosure. You certainly shouldn't have to order them in writing to provide disclosure; that's part of their basic duties.

After this order, Constable Dunlop began to provide disclosure of documents to Staff Sergeant Derochie. Material of relevance to the Lalonde investigation was sent to Constable Desrosiers. Constable Dunlop also told Staff Sergeant

Derochie that his lawyer at that time, Charles Bourgeois, had tapes and other material. Staff Sergeant Derochie's notes of February 29, 2000, say: "Bourgeois may well have evidence relative to this matter. Bourgeois would also have been involved with [C-8]."

Constable Desrosiers tried to obtain the videotape of C-8's interview with Perry Dunlop from his lawyer, Charles Bourgeois. He spoke with Mr. Bourgeois in mid-May 2000 and asked him to notify the CPS Constable if he had the tapes. Constable Desrosiers never heard from Mr. Bourgeois. Constable Desrosiers called Mr. Dunlop's home in July 2000 and asked his wife, Helen, if Perry Dunlop would meet him to discuss the videotape. Ms Dunlop asked the Constable to wait on the phone while she discussed this issue with Perry. She then told the CPS Constable that any inquiries should be directed to Mr. Dunlop's lawyer Howard Yegendorf.

C-8 Discloses Before Lalonde Trial That Abuse on School Trip Never Happened

Shortly before the Lalonde trial, Constable Desrosiers and Crown Attorney Claudette Wilhelm met with C-8 to prepare him for trial, scheduled for September 11, 2000. C-8 was visibly distraught when he appeared for the September 7, 2000, meeting. Richard Nadeau had contacted C-8 as he wanted to put C-8's statement on his website. Mr. Nadeau had also asked C-8 if he would participate in a class action lawsuit. C-8 made it clear that he did not want his statement on the website. The Crown agreed to conduct some research on this issue.

And then, to their surprise, C-8 informed Constable Desrosiers and the Crown attorney that alleged abuse on a school trip in Toronto had never happened. In a statement to the police, C-8 had alleged that Mr. Lalonde had sexually abused him on a trip to Toronto and he had given this evidence at the Lalonde preliminary inquiry. The Crown instructed Constable Desrosiers to take a statement of this new information, and she left the room.

When Constable Desrosiers took the statement, he asked C-8 whether Constable Dunlop had influenced him when C-8 filed his 1997 statement with the police. C-8 replied that Perry Dunlop had typed out his statement. He also said that the story had been concocted in order "to add fuel to the fire":

... Marcel wanted me to just be a shaperone [sic] for the trip, and nothing happened at the school trip with Marcel, things only happened on the boat and when it first started at the house. *Perry had told me that if anything happened at the school, they had a lot of money and that I could sue them.* (Emphasis added)

Constable Desrosiers asked the complainant whether he had fabricated any of the other allegations. C-8 assured the officer that all the other incidents with Marcel Lalonde had taken place. Constable Desrosiers met with the Crown, and the statement was disclosed to the defence. He then briefed Sergeant Garry Lefebvre about the disclosure, and perjury charges against C-8 were contemplated but not pursued.

When the Crown and Constable Desrosiers subsequently met with C-8, the complainant told them that he wanted to take the stand, tell his story, and speak the truth. C-8 also mentioned that Perry Dunlop had contacted him from British Columbia and had left a message with a phone number. Perry Dunlop had left the Cornwall Police Service in June 2000 and had moved with his family to British Columbia. Constable Desrosiers was concerned that Mr. Dunlop was contacting a complainant.

When Constable Desrosiers spoke to C-8 on the telephone later that day, C-8 was very upset as Mr. Nadeau had threatened to place on his website, within the hour, information about C-8's smuggling operation on his boat. C-8 said he wanted to make an official complaint to the police concerning the Nadeau call. The CPS contacted the OPP.

The Conviction of Marcel Lalonde

The Lalonde trial took place in September 2000. C-57 testified at the trial. Constable Desrosiers also gave evidence. Marcel Lalonde was convicted on November 17, 2000, on charges regarding four complainants—C-45, C-8, C-66, and another individual—and was acquitted of charges in relation to three complainants. It is noteworthy that despite C-8's recantation of a past complaint, the trial judge accepted C-8's evidence regarding the abuse by Mr. Lalonde. Madam Justice Métivier held that C-8's "testimony at trial [was] internally coherent and supported by the evidence of Mr. Lalonde himself." She further stated that she accepted C-8's "evidence at trial notwithstanding his additional, but now, withdrawn, evidence at the preliminary and that given in earlier statements. I find that the Crown has proven beyond a reasonable doubt the charges in count seven and eight, and I find Mr. Lalonde guilty as charged."

The Lalonde investigation by Project Truth and the trial are discussed in the chapters on the institutional response of the Ontario Provincial Police and the Ministry of the Attorney General.

It is clear from my review of the investigation of Marcel Lalonde that Cornwall police officers in this and several other investigations did not have information on earlier work that the police force had conducted on the case, such as previous interviews with witnesses and alleged victims of the perpetrator. Either the information was not properly recorded or it was not placed onto systems from

which it would have been retrievable by other officers. Moreover, officers failed to access OMPPAC when it was introduced in 1989, or other electronic databases such as CPIC, to determine whether other police forces had information on the alleged perpetrator of historical child sexual abuse. It is critical that the Cornwall Police Service institute measures to ensure that police officers record their notes of these cases on electronic systems such as OMPPAC to ensure that other officers who become involved with a case have easy access to the history of the investigation.

Another serious problem in the Lalonde investigation was that there was a failure to share information and failure to notify other institutions such as the Children's Aid Society and the School Board in order to protect other children and students at risk of abuse by the alleged perpetrator.

It is also evident that Constable Kevin Malloy was not adequately supervised by Staff Sergeant Brendon Wells and the Cornwall Police Service during the Lalonde investigation. Moreover, the Cornwall Police Service did not properly train officers such as Constable Malloy on the conduct of investigations into sexual abuse, and in particular historical child sexual abuse. As mentioned, the Cornwall Police Service also failed to institute and apply proper practices to ensure cooperation with and notification to other public institutions, including the School Board and Children's Aid Society in the context of this historical sexual abuse investigation of teacher Marcel Lalonde. The Cornwall Police Service also did not enforce practices and procedures that would have ensured that notes and records were properly kept and stored and that they were retrievable by other officers involved in the Lalonde investigation.

I discuss in further detail the failure of the Cornwall Police Service to ensure that Perry Dunlop complied with his obligations and duties as a police officer and as a member of the Cornwall Police Service, which included the duty to disclose information relevant to criminal investigations, the duty to provide truthful evidence in criminal proceedings, and the duty not to conduct unauthorized criminal investigations.

The Jeannette Antoine Investigation

Jeannette Marie Antoine was born in 1960. At the age of one and a half, she was removed from her natural parents by the Children's Aid Society (CAS). She became a Crown ward in 1964. Jeannette Antoine was moved from one foster home to another during her childhood. Shortly before her fifteenth birthday, in 1975, she was placed in a CAS group home on 220 Second Street West in Cornwall.

In March 1976, Jeannette Antoine and the five other residents in the group home ran away. They contacted the CAS and spoke to officials about their treat-

ment at the Second Street group home. Jeannette Antoine alleged that she and other residents of the group home had been abused. As I discuss in greater detail in the chapter on the Children's Aid Society, there is no mention of allegations of sexual misconduct, only of physical abuse, in the 1976 CAS files. All but one of the staff involved with the Second Street group home tendered their resignations over a dispute regarding the extent to which physical force should be used, if at all, to discipline children in care. Bryan Keough remained employed by the Children's Aid Society.

The 1989 Complaint and the Involvement of CPS

In 1989, Jeannette Antoine came to the attention of the Children's Aid Society. There were allegations at that time, which the CAS later found to be unsubstantiated, that Ms Antoine had physically assaulted her nine-year-old daughter. During the course of the CAS investigation, Jeannette Antoine discussed with CAS caseworkers Greg Bell and Suzie Robinson the abuse she had sustained at the Second Street group home when she was a child. She described not only the physical abuse but also the sexual acts of staff members at the group home. Ms Antoine was not satisfied with the outcome of this matter in the mid-1970s and, in particular, that Bryan Keough continued to be an employee of the Children's Aid Society. Ms Antoine's concerns were brought to the attention of the executive director of the CAS, Mr. Tom O'Brien, who decided to turn the matter over to the Cornwall Police Service (CPS) to investigate.

The CAS Executive Director Meets With CPS and the Crown

At the request of CAS Executive Director Tom O'Brien, a meeting was convened with the Cornwall Police Service to discuss the Jeannette Antoine allegations. On September 25, 1989, Mr. O'Brien met with Deputy Police Chief Joseph St. Denis, Inspector Richard Trew, and Crown Attorney Don Johnson. The CAS executive director outlined the events of 1975–1976 in the Second Street group home. No instances of sexual molestation were discussed. It was decided at this meeting, held in the Crown's office, that the matter had been adequately dealt with and that there was no need for the involvement of Cornwall police. As Staff Sergeant Garry Derochie commented in a 1995 report on the Antoine file, "There appeared to be reluctance by both the police and the Crown Attorney to investigate this matter when it surfaced in 1989."

Mr. O'Brien arranged a second meeting with the Cornwall police for September 29, 1989, as he wanted to discuss the allegations of inappropriate sexual behaviour in the group home. This information had been obtained by caseworker Suzie Robinson as a result of her discussions with Jeannette Antoine the previous month, in August 1989. Mr. O'Brien sought the permission of the CAS Board of

Directors to give the 1975–1976 documents on Jeannette Antoine and the Second Street group home to the police.

The second meeting with the Cornwall police was held in the office of Deputy Chief St. Denis. Present at the meeting were Mr. O'Brien, Staff Sergeant Brendon Wells, Deputy Chief St. Denis, and possibly Inspector Trew. The CAS documents were given to the police and the allegations of sexual molestation in the group home were discussed.

Mr. O'Brien, who was nearing retirement, was anxious to have the CPS investigation of the Jeannette Antoine matter completed in an expeditious manner. He wanted the matter resolved before his successor, Richard Abell, assumed the position of executive director of the Children's Aid Society.

Constable Kevin Malloy Assigned the Antoine Investigation

Constable Kevin Malloy's initial contact with Jeannette Antoine was in the context of other allegations surrounding her daughter in 1989. There had been an allegation that her child had been sexually molested by a family acquaintance. It was at the conclusion of that investigation that Greg Bell, a CAS social worker, asked Ms Antoine to share with Constable Malloy her childhood experience at the group home on Second Street. At this September 1989 meeting, Jeannette Antoine discussed the abuse she had sustained while in the care of the CAS at this group home. Constable Malloy told Ms Antoine that if she wanted to pursue the matter criminally, he would need a written statement and she should contact him. A few days later, after CAS Executive Director Tom O'Brien had his two meetings with the Cornwall police discussed above, Constable Malloy was assigned by his supervisors, Staff Sergeant Wells and Inspector Trew, the investigation of the allegations of abuse at the Second Street home.

Constable Malloy considered Jeannette Antoine "less than cooperative." He had asked the complainant for a written statement, "but it was not forthcoming." The Constable did not appear to have an understanding of the difficulties involved for a victim of childhood sexual abuse to write a statement. This was in large part attributable to the fact that Constable Malloy had no training in historical sexual abuse cases or in sexual assault generally. Constable Malloy explained, "There's other investigations that have to take place also, so I just left it with her in the hopes she was going to call me or show up." The CPS Constable took the position that "he had plenty of victims who were cooperating and he could not afford to be running after Antoine," wrote Staff Sergeant Derochie in his review of this investigation in the mid-1990s. This case was historical: allegations of abuse in 1975–1976. In Constable Malloy's view, "he had cases in which victims were in immediate danger and thus justified his inattention to Antoine's complaint." As I discuss in fuller detail, Staff Sergeant Derochie conducted a review of the Antoine investigation in 1994 at the request of Deputy Chief St. Denis.

A critical problem from the inception of the Antoine investigation was the lack of documentation by Constable Malloy. As Staff Sergeant Derochie commented in his report, Constable Malloy “did not keep proper notes of his involvement in this matter”:

The complaint was never registered on OMPPAC, no incident report was ever created, and reports were not submitted. (Emphasis added)

Constable Malloy was well aware of the importance of registering complaints on the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC). Even though OMPPAC was new at the time,²⁵ Constable Malloy and other officers in the Cornwall Police Service understood that each new investigation was required to be registered with an incident report on the OMPPAC system. As Constable Malloy acknowledged at the hearings, “It was my responsibility to put a report on it.” The Cornwall police officer understood that documenting the Antoine case and registering it on OMPPAC enabled other officers at the CPS, including his supervisors, to track the progress of the investigation. It also alerted other police forces, municipal and provincial, that this investigation was taking place in Cornwall.

As I discuss later in this section, when other Cornwall police officers subsequently became involved in the Antoine case in 1994, they would have had access to information on the file such as persons interviewed by Constable Malloy in the 1989 investigation. Particularly because this was a historical sexual assault case allegedly committed in 1975, it was important that a comprehensive written record exist, as people’s memories fade over time and witnesses may die or move out of the province or country. Had Constable Malloy properly documented this case and registered it on OMPPAC, CPS Constable Shawn White and other police officers involved in the Antoine case in later years would have had the information from 1989 to pursue the Antoine investigation.

CPS Staff Sergeant Luc Brunet agreed that registering the matter on OMPPAC is important for both supervision of the file at the first level and management at the second level such as by the deputy chief. By not using OMPPAC, he said, information is denied to other members of the police force such as those supervising an investigation. Staff Sergeant Brunet also acknowledged that registering on OMPPAC is important for historical sexual abuse cases in which perpetrators may have multiple victims in several jurisdictions. Registering on OMPPAC enables other police forces to obtain critical information on the case.

Staff Sergeant Derochie described the failure to register the Antoine matter on OMPPAC as the “ultimate mistake.” He stated that not only did Constable Malloy

25. OMPPAC came online in July 1989.

“not create an OMPPAC incident for the complaint” but he had “no notes indicating that he is investigating the allegations.” As Staff Sergeant Garry Derochie wrote in his report:

Nothing is reported in his notebook until February 5th, 1990, at which time he indicates that Ms. Antoine has provided a statement and that she has been interviewed. His notes on this day end abruptly and a blank space appears in his notebook, which is inconsistent with his normal note keeping. There is no further mention of this investigation in his notes.

Although, according to notes made by the Director of C.A.S. to the effect that he was in contact with Malloy on this matter, Malloy makes no such notations. The C.A.S. Director also notes that he is attempting to get this matter dealt with and infers that police are dragging their feet. (Emphasis added)

Constable Malloy’s supervisors were Staff Sergeant Brendon Wells and Inspector Richard Trew. Staff Sergeant Wells was his direct supervisor, and Inspector Trew was the officer responsible for the Criminal Investigation Bureau (CIB). Unfortunately, Staff Sergeant Wells was on leave for part of October 1989. He underwent surgery in November 1989 and was on leave until June 1990. Inspector Trew reported to the Deputy Chief, who in turn reported to the Chief of the Cornwall Police Service; this was the chain of command.

Staff Sergeant Wells expected Constable Malloy to submit proper reports and to generate an OMPPAC incident number as soon as he had interviewed the alleged victim. Inspector Trew agreed that not registering this matter on OMPPAC was significant and that the Antoine case fell through the cracks. As Staff Sergeant Derochie emphasized, it is “critical ... to record all complaints on OMPPAC immediately.” This would have ensured that if there were personnel changes within the police force as a result of illness, accidents, or transfers, the police officers who replaced the investigating officers were able to access information on the status of the Antoine matter. Chief Claude Shaver also agreed that the Antoine complaint should have been registered on OMPPAC, the investigating officer should have made detailed notes of his involvement in this matter, and reports should have been submitted.

There was clearly a lack of supervision of Constable Malloy by senior officers at the Cornwall Police Service. As Staff Sergeant Derochie said, Constable “Malloy’s supervisors, all the way up the chain of command, had knowledge of the investigation.” However, no senior officer appears to have noticed that an

incident report had not been created on OMPPAC, and none of the senior officers seemed to have asked Constable Malloy for reports on the Antoine matter. In fact, Staff Sergeant Derochie wrote, "It could be suggested that Senior Management of the Service showed no interest in the investigation." Yet, he said, "you have Ms Antoine making allegations that go to the very heart of what the CPS is all about ... [I]t's an important investigation"; "No one appears to have realized that the allegations were very serious." Deputy Chief St. Denis stated that he relied on Inspector Trew to supervise Constable Malloy and to follow the progress of the Antoine case.

Staff Sergeant Derochie stated that Constable Malloy was carrying a considerable caseload at the time. In his view, given the importance of the Antoine complaint, he should not have been assigned other cases.

The CAS executive director, Mr. O'Brien, contacted the Cornwall police several times in 1989 to obtain information on the progress of the Antoine matter. In a telephone call with Mr. O'Brien in mid-December 1989, Constable Malloy told the executive director that Jeannette Antoine was not cooperating, as she had not provided a statement to the police. In his view, there did not appear to be a real complaint. Constable Malloy planned to close the case after consultation with the Crown attorney. Again, Constable Malloy demonstrated that he had inadequate knowledge, due to his lack of training, of victims of childhood abuse.

Four-Month Delay in the Antoine Case

The Antoine case remained inactive for four months. On February 5, 1990, Jeannette Antoine arrived at the Cornwall police station with a handwritten statement. Constable Malloy stated that he was surprised by her visit.

Constable Malloy interviewed Ms Antoine, who appeared to him to be predominantly concerned about the physical abuse allegedly committed by CAS worker Bryan Keough. Even though Ms Antoine stated that she had been sexually abused by CAS workers when she lived in the group home on Second Street, she seemed to Constable Malloy to be interested in pursuing only the allegation of physical abuse. In Constable Malloy's notes of the February 5, 1990, interview, he wrote: "I asked [for] more details in the sexual grabbing or rubbing and she stated 'Well, I'm really only mad about the beatings.'" Constable Malloy testified that he had difficulty dealing with this complainant and that her story appeared to be "helter-skelter" and lacked coherence. He acknowledged at the hearings that some of the difficulties he encountered with Ms Antoine may have been attributable to the emotional and psychological impact of a victim of sexual abuse. Moreover, Ms Antoine may also have been uncomfortable speaking with a male police officer about the sexual acts. In fact, in the CPS reinvestigation of

the Jeannette Antoine allegations in 1994, Constable Heidi Sebalj was present with Constable Shawn White for some of the interviews with the complainant, as Ms Antoine was uncomfortable discussing the details of the abuse with a male officer.

Constable Malloy did not pursue the sexual allegations made by the complainant. Rather, he made the assumption that Ms Antoine did not want to proceed with the sexual acts allegedly perpetrated by staff in the CAS group home.

Nor did Constable Malloy interview or try to locate the victims/witnesses named in Ms Antoine's statement. For example, Ms Antoine suggested there was inappropriate sexual behaviour between a fellow resident, C-85, and Bryan Keough. Yet Constable Malloy made no attempts to find C-85 to ask her about some of the allegations in Ms Antoine's statement. At the hearings, the CPS Constable responsible for the Antoine investigation could not explain why he failed to interview other potential witnesses.

Another problem in the investigation was that Constable Malloy never interviewed Bryan Keough, whom Jeannette Antoine alleged had engaged in sexual behaviour with children at the CAS-operated home. This was even though Constable Malloy knew that Mr. Keough remained an employee of the CAS at that time. Of significance was that in January 1990 the CAS was considering Bryan Keough's application "to be a foster parent with a view to adopting a specific child." This is further discussed in Chapter 9, on the institutional response of the Children's Aid Society.

Between February 5, 1990, when Constable Malloy received Ms Antoine's statement, and April 4, 1990, when the local Crown sent correspondence to the regional Crown, the CPS Constable did not bother to ask either Jeannette Antoine or the CAS for the names and addresses of others residents at the Second Street group home.

The executive director of the CAS, as mentioned, was very interested in finding out how the Antoine case was progressing. Mr. O'Brien made several calls to Constable Malloy and he also contacted Deputy Chief St. Denis to find out the status of the police investigation. He knew that Ms Antoine was concerned that Bryan Keough remained on staff at the CAS. Ms Antoine had told Mr. O'Brien on August 23, 1989, about the abuse at the Second Street group home, which included harsh corporal punishment and sexual assault. Mr. O'Brien's notes of February 7, 1990, state:

The Executive Director has made several calls to Det. Malloy and one to the Deputy Chief to learn the present status of this case. *Today Kevin Malloy advised me by telephone that they have not sufficient evidence on which the police could proceed, and that by telephone the Crown*

Attorney had agreed with the police decision. Det. Malloy has advised Jeannette that she might be able to proceed with a civil action but she did not indicate whether or not she would do so. Her main concern seems to be that the Agency has kept Bryan on staff even after everyone agreed that the harsh corporal punishment had been meted out.

Det. Malloy is to meet with the Crown Attorney to go over the evidence in the case and expects to be advised in writing of the Crown's agreement that no further action is necessary. (Emphasis added)

Constable Malloy told CAS Executive Director Tom O'Brien that "there is nothing to proceed with but I'm waiting for an answer back from the Crown." Constable Malloy testified that he did not pursue the Antoine investigation because he had difficulty "extracting the story" from the complainant, he initially had trouble getting her to come to the police station to meet him, and he had "credibility issues" with the complainant. He also said that Ms Antoine did not appear interested in pursuing the allegations of sexual abuse at the CAS-operated group home.

Yet the Constable did not take measures to pursue these allegations of sexual molestation by interviewing other potential victims or witnesses or by creating a situation in which Ms Antoine would have been more at ease in providing further details on the alleged abuse. For example, suggesting that Ms Antoine recount the allegations of sexual molestation to a female officer might have enabled the complainant to provide the Cornwall police with important information. In his view, there were not reasonable and probable grounds to lay a criminal charge for the physical abuse. He considered it corporal punishment.

The CPS officer also asserted that if the corporal punishment had crossed the line into a common assault, there was a six-month limitation period to lay the charge for the summary conviction offence—a further obstacle. But Constable Malloy acknowledged at the hearings that if Jeannette Antoine had sustained bodily harm from these physical acts, he could have proceeded by way of indictment and the six-month limitation period would not have presented a problem for the prosecution. Ms Antoine told the CAS in August 1989 that Mr. Bryan Keough had beaten her and hurt her arm when she was at the Second Street group home. The limitation period may not, in fact, have been an obstacle with respect to laying criminal charges against CAS staff workers.

Constable Malloy decided to seek the advice of the local Crown attorney, Don Johnson. After discussions, Mr. Johnson decided to contact Mr. Norman Douglas, Regional Director of Crown Attorneys, Eastern Region.

Crown Correspondence

Cornwall Crown Attorney Don Johnson wrote a letter on April 4, 1990, to Norman Douglas, Regional Director of Crown Attorneys, Eastern Region, regarding the Jeannette Antoine case. This letter, copied to both Constable Malloy and Chief Shaver, said:

Although there appears to be some factual basis for a further investigation, I cannot find any indication of specific dates when the alleged incident occurred, or any names and addressed [sic] of any witness whom [sic] may substantiate the allegations.

Mr. Johnson explained to Mr. Douglas that he was sending this letter “because of the climate with respect to alleged child abuse cases from the past which seem to be on the upswing.” Crown Attorney Johnson stated that he had “not brought up the matter of laying charges with the Cornwall Police as names and dates are not available.”

Constable Malloy agreed in his evidence that if he had contacted the CAS to obtain information on the residents of the Second Street home mentioned in Jeannette Antoine’s statement, this may have advanced the CPS investigation. As Constable Malloy conceded, it was “[o]ne of the things I could have done.” And, he acknowledged, perhaps it would have resulted in the laying of criminal charges in 1989 or 1990.

The regional Crown responded to Mr. Johnson’s correspondence a few days later, on April 10, 1990. Mr. Douglas agreed that the police should be cautious with such allegations of child abuse and should investigate this case. Mr. Douglas suggested that Constable Malloy probe deeper and obtain more details on the Jeannette Antoine allegations:

RE: Children’s Aid Society—Cornwall Allegations of Abuse

Thank you for your letter of April 4, 1990.

You are quite correct that we ought to be very careful on these matters, and have the police investigate every allegation of abuse. I would like you to make sure the police begin an investigation if they already have not done so. Perhaps Cst. Malloy can dig a little deeper to secure specifics. (Emphasis added)

Thank you for keeping me advised.

Yours very truly,

Norman S. Douglas, Q.C.
Director of Crown Attorneys
Eastern Region

Constable Malloy claimed that he was unaware of this correspondence from the regional Crown, and that Don Johnson did not show him the April 10, 1990, letter or share this information with him. Constable Malloy stated that it was only during the internal investigation of the Antoine matter by Staff Sergeant Derochie in 1994 that he learned about the April 10, 1990, letter from Mr. Douglas to Mr. Johnson. Constable Malloy claimed that had he been alerted to this correspondence at that time, he would have pursued the Antoine investigation. Mr. Johnson testified that he had no recollection of seeing this letter. The Antoine matter is discussed further in Chapter 11, on the institutional response of the Ministry of the Attorney General.

No Further Activity on the Antoine File

The Cornwall Police Service did not pursue the Jeannette Antoine allegations of abuse. After the April 1990 correspondence, Constable Malloy did not spend any time on the Antoine investigation. As Staff Sergeant Derochie wrote in his report, “[T]here was no activity on this case after April 10th, 1990 by the Crown’s Office or by the Police Service.” Constable Malloy’s explanation was that he was waiting for contact from the Crown, which, he said, did not occur. He reiterated that he “had credibility issues” and “believed” only “parts” of Ms Antoine’s statement. Constable Malloy said he “believed in the corporal punishment and that was going on ... but nothing that could lead me to lay a charge.” The officer maintained that he did not know the CAS had closed the Second Street home nor that all the staff involved with the home, with the exception of Bryan Keough, had tendered their resignations because they refused to employ alternative forms of disciplining the children in that residence. The Antoine file remained in abeyance.

Jeannette Antoine had become exasperated with the lack of attention given to her case. She contacted the CAS in October 1991 and told Richard Abell that no one believed her, that the police had discouraged her from pursuing the matter, and that she planned to “go public” with her story. Mr. Abell encouraged Ms Antoine, in a letter dated October 29, 1991, to discuss her concerns with the Cornwall police. As Staff Sergeant Derochie stated in his report, “[T]he case again fell into a state of dormancy.”

Suzanne Lapointe, Antoine's Sister, Discloses to Constable Malloy Abuse When She Was a Ward of the CAS

In the summer of 1992, Suzanne Lapointe, Jeannette Antoine's sister, spoke to Constable Malloy about alleged sexual abuse by her foster father when she was a ward of the Children's Aid Society. At the time of this disclosure, Ms Lapointe lived in Winnipeg. Constable Malloy asked Ms Lapointe to send a written statement detailing her allegations. On February 19, 1993, Suzanne Lapointe wrote a letter to the Constable in which she identified the ages at which she had been sexually abused and the years when the abuse had occurred. She described some of the sexual acts committed by her foster father. She asked the police officer if the Cornwall Police could investigate the case:

I was sexually molested while in foster care. My foster father's name was/is Mr. Matt. The events took place between 1962–1964. I was a ward of the Children's Aid Society in Cornwall. (I was age 7(–9) years old.)

The foster father would take me to a farmhouse he owned, disrobe me, pose me, then masturbate in front of me. (other sexual details will be given upon request).

...

Is it possible to do some sort of investigation into the Children's Aid ... to see if complaints were registered? I know there is not a lot of things that can be done now after so many years ... but I am hoping you will do what ever is in your power.

I doubt if this man is still alive let alone looking after children ... who knows? *I feel I need to pursue this ... to see if other adults have come forward to register complaints over the years ... I would like to add my name to theirs.*

This is not a vindictive thing I am doing ... [O]ver the years I have dealt with the abuse ... [T]his is just another step in my healing.

I am anxiously awaiting your reply. (Emphasis added)

It is clear in this letter that Ms Lapointe was anxious to deal with the sexual abuse to help her heal from this childhood trauma.

Again, no report was filed by Constable Malloy and the letter was not entered on OMPPAC. As Staff Sergeant Derochie commented, “[T]he letter simply slip[ped] through the cracks.”

Constable Heidi Sebalj’s Contact With Jeannette Antoine

In an investigation on an unrelated matter, Constable Heidi Sebalj came into contact with Jeannette Antoine in July 1992.²⁶ At that time, Ms Antoine told Constable Sebalj about abuse by staff at the CAS-operated Second Street group home. Because Constable Malloy was responsible for this file, Constable Sebalj did not pursue this matter.

But over a year later, in November 1993, Constable Sebalj renewed discussions with Ms Antoine on the alleged abuse at the CAS group home. Constable Sebalj in 1993 had been involved with David Silmser’s allegations of historical sexual abuse against Father Charles MacDonald and probation officer Ken Seguin. On her own initiative, Constable Sebalj asked Ms Antoine to come to the police station for an interview. As I discuss further in Chapter 9, on the Children’s Aid Society, a CAS caseworker, Geraldine Fitzpatrick, who was present at this interview, seemed dissatisfied with the lack of attention to Ms Antoine’s allegations. Staff Sergeant Derochie wrote the following in his report:

Constable Sebalj’s interest in Antoine’s story resurfaces in November of 1993. On her own, Cst. Sebalj called Antoine into the police station and interviewed her. Also present in an unofficial capacity, and without the knowledge of the C.A.S., was Geraldine Fitzpatrick. Fitzpatrick is a C.A.S. Caseworker. Also playing a role in this matter was Carleen Cummings, a contract C.A.S. Worker, who was assisting Antoine in an official capacity. Cummings is believed to be sympathetic to Antoine’s cause and may not be happy with the way C.A.S. had dealt with this matter.

Constable Sebalj was not authorized by her superiors to conduct an investigation of the Antoine case. Moreover, Constable Sebalj failed to keep proper records and notes of her contacts with Ms Antoine. Staff Sergeant Brunet was surprised to learn that Constable Sebalj had conducted this interview with Ms Antoine; he would have expected the Constable to consult him and discuss the matter with him. Similarly, Staff Sergeant Derochie testified that he did not

26. Note that Constable Heidi Sebalj did not testify at the Inquiry due to medical reasons.

consider it appropriate in the circumstances for Constable Sebalj to investigate this matter. The Constable failed to record on OMPPAC in a timely manner her contacts and investigation of the Antoine allegations. This occurred only after the matter became public. As discussed in this Report, inadequate record keeping and poor documentation are some of the problems that characterized this and other CPS investigations on historical sexual abuse.

Antoine Allegations in the Media: Deputy Chief Asks Staff Sergeant Garry Derochie to Review Investigation

In January 1994, Charlie Greenwell, a reporter, interviewed Ms Antoine for CJOH-TV, the local CTV station, on her allegations of historical abuse at the group home operated by the CAS. There was a broadcast on television.

Constable Malloy was not working at the Cornwall Police Service at this time due to medical reasons. He had been on leave since March 1993 as a result of back surgery.

At this time, Staff Sergeant Derochie had completed his review of the CPS investigation of the Silmsier matter and Perry Dunlop and the release of information to the CAS. On January 11, 1994, Deputy Chief St. Denis asked Staff Sergeant Derochie to conduct an internal investigation of the Antoine case. The Deputy Chief told Staff Sergeant Derochie in the briefing that this was another case of poor case management and inadequate documentation. Staff Sergeant Derochie's notes of the meeting also state:

... briefed by the D/C; Jeannette ANTOINE is alleging being abused while a ward of CAS. The allegations were reported to the authorities in 1989. Police investigated but nothing was done. She suspects that CAS and police investigator, who was sitting as a board member of CAS at the time, may have covered up the abuse.

Ms Antoine was alleging through the media that there was a cover-up of her complaint of physical and sexual abuse at a CAS group home because Constable Malloy was a member of the Board of Directors of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry at the time of the CPS investigation.

Staff Sergeant Derochie, rather than Staff Sergeant Brunet, was selected to conduct this review as Staff Sergeant Brunet was also a member of the CAS Board. Staff Sergeant Derochie was instructed to:

1. have Ms. Antoine's allegations of assault thoroughly investigated, and if the evidence will support the laying of charges ... to resolve this matter in the Courts.

2. review the Cornwall Police Service's handling of Ms. Antoine's 1989 complaint and to make recommendations as to discipline and/or procedural changes to correct deficiencies in the manner in which we investigate historical sexual assaults.

He was asked to submit his report to Acting Chief Carl Johnston.

Staff Sergeant Derochie met with Constable Heidi Sebalj, Constable Kevin Malloy, and Jeannette Antoine in January 1994. Ms Antoine wanted the police to investigate the physical and sexual abuse she had suffered at the CAS group home on Second Street, the sexual abuse by her natural father, and the sexual abuse of her sister Suzanne Lapointe when she lived in a foster home. Ms Antoine asked whether Constable Heidi Sebalj could investigate these matters, as she felt comfortable with this officer. Constable Sebalj made it clear to Staff Sergeant Derochie that she was interested in this case.

Nevertheless, Staff Sergeant Derochie "didn't think it was appropriate" for Constable Sebalj to investigate the Antoine matter. He was "concerned about what was driving Constable Sebalj's motivations." He decided that Constable Shawn White, whom Staff Sergeant Derochie considered experienced, should investigate the case. In contrast to Constable Sebalj, Constable White did not have frequent dealings with CAS workers and, in the opinion of the Staff Sergeant, would bring the necessary objectivity to this case.

Ms Antoine seemed to be fearful of men and was comfortable with Constable Sebalj. A compromise was reached. Constable Sebalj would be present when Ms Antoine met with Constable White. Staff Sergeant Derochie assured Ms Antoine that this investigation would be given high priority and that Constable White would work on this case exclusively until it was completed. Constable White's investigation was to focus on both the physical and the sexual abuse allegations at the Second Street group home in Cornwall. The other two matters—the alleged abuse by her natural father at the time she lived at a group home in Minden and the alleged abuse of her sister Suzanne Lapointe in a foster home—were not the subject of the CPS investigation, stated Staff Sergeant Derochie, as they fell within OPP jurisdiction. The allegations made by Jeannette Antoine are further discussed in Chapter 9, on the institutional response of the Children's Aid Society.

The Involvement of Constable White in the Antoine Case

Constable White, as mentioned, was asked to investigate the allegations of abuse that occurred at the Second Street group home. It was his initial understanding that the complaint was confined to physical abuse. He was aware that Constable Malloy had previously investigated this matter.

As discussed earlier, because Jeannette Antoine was uneasy discussing the abuse with males, Constable Heidi Sebalj was present at some of the interviews, including the first meeting on January 26, 1994. When Jeannette Antoine was interviewed in early February 1994 and her statement was taken, she disclosed only physical abuse at the Second Street group home.

Three people interviewed by Constable White had stated that Mr. John Primeau, a worker at the Second Street group home, had sexually assaulted former residents. In other words, in addition to Jeannette Antoine, other female residents at the group home stated that they had been sexually abused.

Constable White had a meeting with the regional Crown, Peter Griffiths, to examine these allegations on June 14, 1994. He discussed with Mr. Griffiths three incidents of sexual abuse. Constable White also told the Crown that he had received information regarding sexual abuse allegedly committed in other foster homes. He mentioned that there “may be problem in how compl[aints] of sexual abuse against employees of CAS and foster parent” were managed, and suggested that perhaps a protocol should be developed.

Constable White testified that he never had any discussions with Constable Sebalj about her previous involvement in the Jeannette Antoine matter. He did not discuss with Constable Sebalj the lengthy interview she and CAS employee Geraldine Fitzpatrick had with Ms Antoine in November 1993.

Ms Antoine had given multiple statements to the Cornwall police about her abuse when she was a ward of the Children’s Aid Society. She had given a statement to Constable Malloy in the earlier CPS investigation in 1989–1990, she had been interviewed by Constable Sebalj and Geraldine Fitzpatrick in November 1993, and Constable White had also taken a statement from Ms Antoine in 1994 in the CPS re-investigation of her allegations of abuse when she was a resident of the CAS-operated Second Street group home.

When Constable White met with Ian MacLean of the CAS in June 1994, the CAS official described Mr. Primeau as a “bad worker.” Mr. MacLean told the CPS Constable that Mr. Primeau would take the girls from the Second Street home alone to various locations, in spite of the fact that he had been instructed not to do so.

During the course of Constable White’s investigation, there were also complaints regarding a man named Derry Tenger concerning the treatment of children at the Second Street group home. Mr. Tenger was a former director of the Second Street group home. There were also allegations by a male who lived in Vancouver that he had been sexually abused by a farm worker at a farm-based foster home.²⁷ Allegations of sexual abuse at approximately six different

27. This is discussed in the chapter on the institutional response of the Children’s Aid Society.

CAS-operated homes²⁸ for children were made during the course of Constable White's investigation.

Constable White prepared a Crown brief, which he sent in September 1994 to the regional Crown, Peter Griffiths. He subsequently met with Mr. Griffiths and Mr. Murray MacDonald to discuss the Antoine file. An important document missing from the Crown brief was the statement from Jeannette Antoine to Constable Kevin Malloy. There were references to sexual abuse at the Second Street group home in that statement. When Ms Antoine provided her statement to Constable Malloy, she alleged that Bryan Keough had rubbed her breasts in the bedroom and that Mr. Keough had "talked dirty" to C-85, one of the girls who also lived in the group home. Constable White agreed that it is important to provide all relevant information to the Crown. This information should have been given to the Crown lawyers in their evaluation of whether reasonable and probable grounds existed in this case to lay a criminal charge against the alleged perpetrators of the abuse.

Constable White noticed that there were discrepancies between Jeannette Antoine's statement to Constable Malloy and the statement she provided in February 1994. Constable White did not use Jeannette Antoine's prior statement to refresh her memory when he took her statement in 1994. It is also important to note that a prior statement is significant in terms of challenging the credibility of a complainant and ought to have been included in the material sent to the Crown. Yet Constable White did not include the earlier statement in the Crown brief.

Constable White agreed that his supervisors, Inspector Trew and Staff Sergeant Derochie, had made it clear that all information gathered in the Antoine investigation was to be documented. The Constable was told that the information would be shared with the Ontario Provincial Police (OPP), which would be examining allegations of sexual abuse in public institutions.

By October 1994, Constable White had completed the investigation. He met with Mr. Angelo Towndale, a CAS manager of human resources, and reviewed the historical allegations of sexual abuse in CAS foster homes. Constable White told Mr. Towndale that when CAS wards had alleged they had been sexually abused by their caregivers, these cases had not been reported to the police by the CAS. Mr. Towndale acknowledged that although this was the case in the 1970s and 1980s, the CAS had since made changes to its policies. Constable White also raised the issue of the process of selecting foster parents and individuals to work at CAS-operated group homes. Mr. Towndale stated that although the CAS did not in the past have policies for oversight of or appropriate

28. For example, the Second Street, Laurencrest, Cumberland, and Skafte homes.

discipline in group homes, the agency had since developed protocols and policies. He assured the CPS officer that there was currently much more oversight by the CAS.

Constable White did not share with Mr. Towndale the information he had amassed on allegations against certain individuals at CAS-operated homes. The CPS Constable explained at the hearings that he was “guarded about not giving all the information of [his] investigation with Children’s Aid”:

At that particular point in October ’94 ... this whole idea about institutional sexual abuse was very much just starting to get investigated and ... the OPP were going to be initiating, probably, a bigger investigation so I was led to believe, at that particular time, dealing with institutional response to sexual abuse allegations.

However, some children in the Cornwall community may have been at risk of abuse by these alleged perpetrators. There is a duty to report reasonable suspicion of abuse to the Children’s Aid Society.

As mentioned, during the course of his investigation, Constable White spoke with former residents of the Second Street group home. These individuals, who were now adults, not only corroborated some of the information conveyed by Ms Antoine but moreover, provided details on abuse they themselves had suffered at this CAS-operated group home. For example, C-83 disclosed that she had been fondled and touched sexually by “John” when she was a resident of the Second Street group home. Constable White concluded that this individual was John Primeau. Constable White considered this woman to be credible and thought her statements about sexual abuse had veracity. It was evident to the CPS officer that this woman had been psychologically damaged by the abuse. C-83 also disclosed to Constable White that she had been sexually assaulted in another CAS foster home. She alleged that while she was living at the Skafté foster home in St. Andrews, the son of the foster parents had fondled her. Inscribed in Constable White’s notes is, “Still not sure if she wants to have the police pursue any of these things. She will consider the matter carefully before making any decision.” Constable White did not make contact with John Primeau. Mr. Primeau was never interviewed by the CPS officer.

Constable White spoke to C-84, who had been a resident with Ms Antoine at the Second Street group home. C-84 also alleged that he had been sexually abused at a group home in Iroquois and at a foster home in Cornwall. C-84 discussed sexual behaviour in the Cumberland Street home and also said that Mike Keough, Bryan Keough’s brother, had pushed him through a wall in the Second Street home.

C-85, another former resident of the Second Street group home, told Constable White in a telephone interview in early 1994 that she had been physically and sexually abused. The CPS officer considered her statement to be credible.

As will be discussed in Chapter 9, on the institutional response of the Children's Aid Society, Lorraine, another of Ms Antoine's sisters, alleged that she had been sexually abused by her foster father. Constable White offered to put Lorraine in contact with the OPP.

Constable White also received serious allegations of abuse from C-86 regarding a worker at the Laurencrest home. C-86 told Constable White that when he was a CAS ward, a worker at Laurencrest had engaged in oral and anal intercourse with him. Constable White did not pursue these allegations with C-86.

It is clear that Constable White, in his investigation of the Jeannette Antoine matter at the Second Street group home, encountered other individuals who also alleged abuse at different homes operated by the CAS. He began to believe that the allegations were systemic, which concerned him.

No Criminal Charges Laid

Constable Shawn White had been asked by his supervisor, Staff Sergeant Brunet, to reinvestigate the complaint made in the late 1980s to the CPS by Jeannette Antoine. Constable White conducted this investigation, which began in January 1994, under the supervision of Staff Sergeant Derochie. During this re-investigation, which spanned January to October 1994, Constable White was able to identify all but one of the children who had lived in the Second Street home in the mid-1970s, who Ms Antoine said could corroborate the abuse at the home. Constable White prepared a brief and sought the legal opinion of the Crown.

In September 1994, Constable White sent regional Crown Peter Griffiths his investigation brief on the allegations of Jeannette Antoine. Mr. Griffiths was asked to give his opinion as to whether reasonable and probable grounds existed to lay criminal charges. Mr. Griffiths met with Constable White and Crown Attorney Murray MacDonald on October 19, 1994, to discuss his conclusions. In his letter of October 24, 1994, which I discuss in Chapter 11, on the institutional response of the Ministry of the Attorney General, Mr. Griffiths concluded that there were no reasonable and probable grounds to lay charges on any of the allegations. With respect to the physical abuse allegation, Mr. Griffiths stated that "[t]here was no outlasting physical injury as a result of any of these beatings beyond bruising" and that the limitation period was six months for the summary conviction offence of common assault. Regarding Ms Antoine's allegation of sexual abuse, Mr. Griffiths concluded:

Given the nature of this allegation, the age of the complaint and the lack of confirmatory evidence, it is my opinion that you do not have reasonable and probable grounds for the laying of any charges arising out of this complaint.

Moreover, the allegations of sexual misconduct of other residents of the Second Street home were, according to Mr. Griffiths, subject to the following “impediments”: (1) none of the victims wanted to make a formal complaint; and (2) the memories of the victims were “severely impaired.” Therefore, Mr. Griffiths concluded that there were no reasonable and probable grounds to warrant the laying of criminal charges with respect to any of the allegations and if, in fact, charges were laid, “there would be no reasonable prospect of conviction.”

Staff Sergeant Derochie sent a memo to Acting Chief Carl Johnston after reviewing Mr. Griffiths’ letter. He assured the Acting Chief that Constable White had conducted a thorough investigation and that both he and Constable White agreed that “it would be very difficult to successfully prosecute anyone in this matter.” In Staff Sergeant Derochie’s view, “Mr. Griffiths letter puts this matter to rest.” The Staff Sergeant informed the Acting Chief that Ms Antoine was instituting a civil action against the Children’s Aid Society and was also pursuing criminal charges with the OPP against her natural father.

No criminal charges were laid against staff at the Second Street group home for the allegations of physical and sexual abuse made by Jeannette Antoine.

Systemic Problems, Poor Case Management, Delays, Inadequate Record Keeping, and Poor Supervision

Staff Sergeant Derochie’s review of the Antoine investigation was completed and his report finalized in April 1995. Entitled “Report to Acting Chief Carl Johnston on the Media Allegations of Misconduct by the Cornwall Police Service in the 1989–90 Investigation of the Jeannette Antoine Complaint Against the Cornwall Children’s Aid Society,” the Report concluded that there was a systemic failure by the Cornwall police in the Antoine case. Staff Sergeant Derochie’s criticism was directed not only at the investigating officer, Constable Malloy, but also at the supervising officers, the Deputy Chief, and the Chief of Police.

The first and “most significant mistake,” stated Staff Sergeant Derochie, was “not creating an OMPPAC incident”:

It was clearly Cst. Malloy’s responsibility to record the complaint and thus generate an OMPPAC incident number. *Had that been done, the OMPPAC system would have reminded Cst. Malloy and his supervisors that this investigation required attention.* (Emphasis added)

In other words, the inaction on the Antoine complaint would have been identified by checks and balances built into the OMPPAC system.

He was also very critical of Constable Malloy's inadequate note taking:

The second mistake, and one that is inexcusable, is Cst. Malloy's failure to keep accurate notes of his involvement with this incident ... [N]ote keeping, particularly for C.I.B. investigators, is critical and can not be overstated. Cst. Malloy was, during this time in question, experienced enough to know that note keeping was very important. (Emphasis added)

Staff Sergeant Derochie also expressed general concern about the loose-leaf binders used by CPS officers to record notes. Pages from such notebooks could be lost or removed, he said, and these notebooks could be "challenged or be subject to suspicion." He stated that officers should be recording notes in bound notebooks. As I discuss in the context of other CPS investigations, this was a pervasive problem in this police force. Constable Malloy was informally counselled by Staff Sergeant Derochie for his failure to keep proper notes.

Staff Sergeant Derochie was also critical of Constable Malloy's supervisors, who ought to have ensured that the Antoine investigation was progressing: "They ought to have noticed that an incident had not been created and that reports were not being submitted." There should have been closer supervision of an officer's caseload and periodic inspections of notebooks. Constable Malloy had a considerable caseload at the time of the 1989–1990 Antoine complaint and in the Staff Sergeant's opinion, should not have been assigned other cases until he dealt with Ms Antoine's complaint. Constable Malloy's supervisors should have known that "this was an investigation of some consequence and had to be dealt with in a timely manner," concluded Staff Sergeant Derochie.

Another serious problem regarding supervision was that both Inspector Trew and Staff Sergeant Wells were absent from the CIB for significant periods beginning in October 1989 and into 1990. To exacerbate the matter, when Staff Inspector Stuart McDonald became the Officer in Charge of the CIB on January 1, 1990, he was not briefed on the Antoine complaint and had no knowledge that such an investigation was in fact being conducted. Staff Sergeant Derochie concluded that there was a lack of continuity of supervisors in the CIB as well as in other areas of the organization.

Criticism was also directed to the Chief and Deputy Chief of the Cornwall Police Service. Both the Chief and Deputy Chief had knowledge of the Antoine complaint but seemed to have "lost track of the complaint the minute it was turned over to Cst. Malloy." In Staff Sergeant Derochie's view, the Chief and

Deputy Chief “should have been kept informed on the progress of this investigation,” they “should have recognized the seriousness of the allegations,” and they should have “ensured that the investigation was proceeding expeditiously.” Clearly, the chain of command failed to monitor the progress of the investigation and, as Staff Sergeant Derochie acknowledged, the Antoine case fell through the cracks. Staff Sergeant Derochie wrote:

No one appeared to have recognized the sensitivity of the subject matter involved in these allegations, nor the potential consequences that an improper investigation might mean to the agencies involved.

Staff Sergeant Derochie questioned why the local Crown, Mr. Johnson, who believed the Antoine case had merit, sought the advice of the regional Crown as to whether charges should be laid. The problem became more serious, as the local Crown claimed he did not receive the April 10, 1990, response from the regional Crown. Neither the regional Crown nor the local Crown followed up on the Antoine case, wrote Staff Sergeant Derochie in his report.

In Staff Sergeant Derochie’s opinion, there was no cover-up in the CPS investigation. As he wrote in his report to Acting Chief Johnston, “Mistakes were made, case management and supervision was non-existing and there may even have been a degree of incompetence involved, but not a cover-up.”

He suggested amendments to directives of the Cornwall Police Service to address weaknesses in procedures identified in the Antoine case as well as in other cases. Staff Sergeant Derochie had similar concerns about case management, supervision, record keeping and delay in the Silmser investigation. He thought that the Antoine, Silmser, and Earl Landry Jr. investigations suffered from similar deficiencies, indicating that a systemic problem existed in the Cornwall Police Service. I agree.

Staff Sergeant Derochie wrote that in the Antoine case it appeared:

... that virtually everyone who came into contact with this investigation, both from within our Service and other agencies from outside, failed in some manner to deal decisively with Ms Antoine’s complaint.

Following the review of the Antoine investigation, a directive regarding OMPPAC was ordered by Acting Police Chief Johnston on May 8, 1995. Staff Sergeant Derochie had also found that officers in the Cornwall Police Service had not appropriately used OMPPAC in the Silmser case. This was “more than an isolated incident”; it was a serious problem that needed to be addressed. The Cornwall Police Directive stated:

Investigations undertaken by Cornwall Police Service personnel shall be recorded and reported on by way of OMPPAC incident number, either in regular production or in the “Projects” feature. OMPPAC incidents will be created immediately for all demand calls for service. Personnel who uncover information or evidence of criminal activity during the course of unrelated investigations, will immediately cause an OMPPAC incident number to be created, even if investigations into those matters are not going to be immediate.

It is evident that the investigation of the Antoine allegations of sexual abuse at the Second Street group home, as well as the complaints of Jeannette’s sister Suzanne Lapointe of sexual abuse at a foster home, suffered from many deficiencies at various levels of the Cornwall Police Service.

The officer assigned responsibility to the Antoine matter, Constable Kevin Malloy, failed to conduct a thorough and timely investigation. There was inactivity on the file for months, and he failed to follow up with other victims and witnesses. Very importantly, he did not register the complaint on OMPPAC and no incident report was created. Although Constable Malloy understood the importance of documentation, he failed to keep proper notes and records with respect to the investigation of both Jeannette Antoine and Suzanne Lapointe.

It is clear that Constable Malloy and the Cornwall Police Service failed to conduct a thorough and timely investigation into the Antoine allegations of historical sexual abuse. As mentioned, Constable Malloy failed to keep proper notes and records of the investigation. Moreover, Staff Sergeant Brunet, Staff Sergeant Wells, and Inspector Trew failed to properly supervise Constable Malloy during the investigation of the Antoine allegations.

Chief Shaver should have ensured that procedures were in place such that investigators were properly supervised in the context of investigations of sexual abuse of young people. He should have ensured that such investigations were assigned high priority and conducted in a timely manner. And Deputy Chief St. Denis should have properly supervised the head of the CIB to ensure that each investigation was conducted in a thorough manner.

Constable Malloy’s supervisors should have ensured that his notes on the investigation were properly reported and stored and that they were retrievable. They also should have offered support to the complainant to enable her to provide details on her allegations of abuse. It is evident that the Cornwall police failed to train members of the force on the conduct of investigations into allegations of historical sexual abuse.

Another failing is that the allegations of Suzanne Lapointe were not pursued by the Cornwall Police Service.

I also find that Constable Sebalj interviewed Jeannette Antoine without authorization, failed to keep proper notes of her contacts with Jeannette Antoine, and failed to update OMPPAC in a timely manner with respect to her contacts with Ms Antoine.

It is my conclusion that the Cornwall Police Service unreasonably delayed the investigation and did not properly investigate the allegations of abuse by Jeannette Antoine in 1989. This equally applied to the allegations of abuse by Suzanne Lapointe.

Allegations by David Silmsers of Sexual Abuse by a Priest and Probation Officer

David Silmsers Contacts the Cornwall Police

Sergeant Steve Nakic received a call at the Cornwall police station from David Silmsers on December 9, 1992. Mr. Silmsers told the CPS officer that in the past he had been sexually assaulted by a Cornwall priest and a probation officer. Mr. Silmsers disclosed that when he was an altar boy at St. Columban's Church twenty years before, Father Charles MacDonald had sexually assaulted him. He also said that Cornwall probation officer Ken Seguin, a friend of the priest, had sexually abused him. Mr. Silmsers told Sergeant Nakic that he thought Father MacDonald now lived in Williamstown, a village about twenty minutes northeast of Cornwall.

Sergeant Nakic decided to speak that day to Staff Inspector Stuart McDonald, head of the Criminal Investigation Bureau (CIB), about the allegations of sexual abuse by Mr. Silmsers. The Staff Inspector thought this case "needed a very experienced investigator." This was clearly going to be a "high-profile case," involving allegations of sexual offences against young people by prominent members of the community. As Staff Inspector McDonald said in his testimony:

... I felt that this case had insurmountable or a mountain of possibilities, none of which would be good.

...

We all heard about cases such as the youth home in Alfred, the Mount Cashel, Newfoundland problems, the residential schools.

...

... I had no idea where this thing would lead, let alone this far, but I just felt that we had to put the best resources we had on—available on the case because I know that these cases are very, very sensitive in the community ...

Staff Inspector McDonald thought about the resources and the officers available to investigate this case. Constable Kevin Malloy and Sergeant Ron Lefebvre²⁹ were involved in a difficult murder case at the time. Constable Heidi Sebalj³⁰ was in the Youth Bureau, but Staff Inspector McDonald dismissed her as the appropriate officer to assume responsibility for the Silmsers case as he “really didn’t think that she had enough experience to be able to handle a case of this possible magnitude.” Constable Sebalj was the only officer in the Youth Bureau at that time but she had a relatively heavy caseload, was “fairly new in the Branch,” and in Staff Inspector McDonald’s view did not have the experience for a case of this complexity and high profile.

Staff Inspector McDonald concluded that Sergeant Claude Lortie, an experienced investigator, was “probably the best person at that time to do the investigation” of the sexual abuse allegations by David Silmsers. Sergeant Lortie was under the direct command of Chief Claude Shaver.³¹

Staff Inspector McDonald met with Chief Shaver on December 9, 1992, the same day that Mr. Silmsers called the Cornwall Police Service (CPS), to discuss the assignment of this case. Staff Inspector McDonald explained that officers in the CIB had a heavy caseload and could not devote the necessary attention to this file. Chief Shaver agreed that Sergeant Lortie should be assigned responsibility for this investigation.

On Staff Inspector McDonald’s instructions, Sergeant Nakic called David Silmsers and informed him that a police officer would come to Bourget, where he resided, within a week. Bourget is approximately a forty-five- to fifty-minute drive from Cornwall. Staff Sergeant Luc Brunet explained at the hearings that because Mr. Silmsers did not live in the City of Cornwall and because he was not considered to be in imminent danger, a police officer was not dispatched when the call was received.

It is important to note that no Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) incident report was created when the complaint was received from Mr. Silmsers. This deviated from the practice of CPS officers. Sergeant Nakic did not create an incident number on OMPPAC when he received the December 9, 1992, complaint, and nor did Sergeant Lortie, who was assigned the file the following day. Staff Sergeant Brunet agreed that

29. Sergeant Ron Lefebvre did not testify at the Inquiry due to medical reasons.

30. Constable Heidi Sebalj did not testify at the Inquiry due to medical reasons.

31. Sergeant Lortie explained it was often the practice in smaller police forces for the Intelligence Officer to report directly to the Chief of Police.

an incident number ought to have been created on OMPPAC when the complaint by David Silmsers was received. The reason is that if the December 9, 1992, correspondence from Sergeant Nakic to Staff Inspector McDonald had been misplaced or lost, this incident could have been tracked. As Chief Shaver said:

... [T]he file should have been opened by Slavko [Steve] Nakic originally. There should have been an OMPPAC file opened immediately.

...

And if that didn't happen, then Staff Inspector McDonald should have opened an OMPPAC file or ensured that it was opened. Lortie should have opened it. I should have ensured—I failed—I should have ensured to make sure that Lortie had the file open, and I didn't check to see if the file was open ...

Staff Sergeant Garry Derochie agreed that the CPS officers:

ought to have started an OMPPAC incident from the very start ... Sergeant Nakic should have had it. Failing that, Staff Inspector [McDonald] should have required it. Failing that, Claude Lortie, who was going to be the investigator, would certainly need an incident created in order to report on it, so, you know, he should have opened one as well.

The day after the Silmsers call, Chief Shaver instructed Sergeant Lortie to investigate the allegations made by David Silmsers of sexual assault by Father Charles MacDonald and Ken Seguin. The Chief handed him the record of the call prepared by Sergeant Nakic. It was evident to Sergeant Lortie that this was a high-priority file.

The assignment of the Silmsers complaint to Sergeant Lortie directly by Chief Shaver was not the way that criminal investigations were generally assigned, testified Deputy Chief Joseph St. Denis. This was confirmed by Staff Sergeant Derochie. The deputy police chief should be in the chain of command for every investigation, stated Deputy Chief St. Denis. This was a sexual assault file, and in my view, there should have been a discussion with the Deputy Chief regarding the person to whom Sergeant Lortie was to report in the investigation of the Silmsers complaint.

Sergeant Lortie knew Ken Seguin, who worked with his wife, Carole Cardinal, also a probation officer at the Cornwall Probation Office. Claude Lortie had also

attended a Christmas dinner at which Mr. Seguin was present. There was no discussion between Chief Shaver and Sergeant Lortie at this time about the fact that Mr. Seguin was a colleague of his wife and that he knew Ken Seguin.

Sergeant Lortie had surgery scheduled for January 4, 1993, and was expected to be absent from work for two weeks. This was not mentioned at the meeting with Chief Shaver either.

There was inconsistent testimony as to whether Chief Shaver had instructed Sergeant Lortie at this time to create a project file for the investigation. As discussed, only designated police officers have access to information in project files. In such a case, other officers at the CPS or at other police forces such as the OPP would not have known that there had been a complaint of sexual abuse perpetrated by Father MacDonald or probation officer Ken Seguin, people in positions of trust and authority who continued to have contact with young persons. It is noteworthy that Chief Shaver testified that this was the first and only file he assigned as a project file during his tenure as Chief of the Cornwall Police Service.

Chief Shaver testified that he had instructed Sergeant Lortie to create a project file on OMPPAC for this investigation. Sergeant Lortie, by contrast, denied that he had been instructed by the Chief to create a project file for the Silmsen case at that time. Chief Shaver explained at the hearings that he had wanted to keep this investigation of Father MacDonald confidential, in essence to preserve the reputation of other priests in the Cornwall community:

... [W]e have a priest that's being accused here and we have to look at the presumption of innocence for the priest also because *if it gets out in the community, it becomes every priest*, and that's pretty much what happened down the road.

It came out of this community that it wasn't just Father MacDonald; it was every priest, and all of a sudden everyone who wore a white collar was a suspect. And I—we saw this. I mean, anybody who lived in this community saw this every day, where a lot of innocent people were being dragged into this thing because of an alleged assault by a priest.

...

... I wanted to keep it as well under wraps as I could until it was investigated and we could start looking at reasonable and probable grounds, and then after that it would go wherever we had to have it go.

...

If the word got out, sir, and the word gets out—well, it got out. It got out of our offices anyway, but if the word got out, I was worried that once it does ... officers take this home. They talk to their wives, if their wives talk to somebody else or somebody else or whatever. That kind of thing does happen, unfortunately.

And if it did get out, *what I didn't want to have happen was this sort of wide-open season on priests* when we didn't know. You know, we're still investigating one complainant and one complaint against a priest. (Emphasis added)

Chief Shaver was intent on keeping confidential this investigation of allegations of sexual assault by Father MacDonald. He was worried that all priests in the Cornwall community would be suspect. And he was concerned that publicity about the case would cause other victims to come forward, some of whom might falsely allege that a priest had sexually abused them:

... [L]ooking down the road I thought, you know, that this could have large ramifications for us if we started to get, you know, a tremendous amount of victims coming in, that type of thing.

The Chief of Police was worried about a potential flood of victims.

I find the reasoning of Chief Shaver unpersuasive. Chief Shaver acknowledged that he was aware at that time of investigations and convictions of clergy for sexual assault of young persons in different parts of Ontario, Newfoundland, and other regions in Canada, as well as in the United States. He also knew that if this investigation was not placed in a project file, it was possible that other victims would come forward and report that they, too, had been sexually abused by these perpetrators. And importantly, publicity about this investigation could have had the effect of protecting other children who came into contact with these alleged abusers. Yet the Chief of the Cornwall Police Service seemed worried about the reputation of the alleged perpetrator, Father Charles MacDonald, rather than about vulnerable children and youth with whom this authority figure could come into contact. He was also concerned about a flood of other victims who would allege that they had been abused by these perpetrators. In my view, the Chief did not adequately focus his attention on the protection of children at possible risk of abuse by Father MacDonald, who continued to have contact with young persons in the community.

Silmser File Reassigned to Constable Heidi Sebalj

Sergeant Lortie did some initial work on the investigation for a few weeks before it was reassigned to Constable Heidi Sebalj.

On December 14, 1992, Sergeant Lortie conducted a Canadian Police Information Centre (CPIC) check on the complainant, David Silmsers. He testified that he wanted to know whether Mr. Silmsers had a criminal record, in order to help him understand the type of person he would be “working with.” However, it is noteworthy that Sergeant Lortie did not conduct a CPIC check of either of the alleged perpetrators, Father Charles MacDonald or Ken Seguin.

Sergeant Lortie then called David Silmsers to arrange a meeting. Mr. Silmsers told the CPS officer that he did not want to meet before Christmas as he did not want to “ruin anybody’s holidays.” Sergeant Lortie explained that he had surgery scheduled for January 4, 1993, and would not be at work for two weeks. As a result, a meeting was scheduled for January 18, 1993.

Although Sergeant Nakic had told Mr. Silmsers on December 9, 1992, that a CPS officer would come within the week to his home in Bourget, the meeting with Sergeant Lortie was scheduled one month later. Sergeant Lortie testified that it was his intention to take a statement from Mr. Silmsers on January 18, 1993, then meet with the alleged perpetrators, Ken Seguin and Father MacDonald, after which he planned to contact the institutions at which the alleged perpetrators worked.

Mr. Silmsers told Sergeant Lortie in this call that he had contacted the Bishop, but the Sergeant did not ask Mr. Silmsers for any details. Nor did Sergeant Lortie make any entries in OMPPAC during the time he was responsible for the Silmsers file. As Staff Sergeant Derochie said, other officers at CPS would not have had access to information on the Silmsers complaint as no record of these allegations was placed on the OMPPAC system. As I discuss in this section, there was inadequate and inaccurate³² record keeping throughout the investigation of the Silmsers case. Although Sergeant Lortie reported directly to Claude Shaver, the Chief of Police did not ask him about the progress of the file or whether any of the information had been entered on OMPPAC.

The January 18, 1993, meeting between Sergeant Lortie and Mr. Silmsers never took place. Deputy Chief St. Denis told Sergeant Lortie before his surgical procedure that the file would be reassigned, as the scheduled date to meet the complainant was too long a period to wait for the interview.

32. For example, David Silmsers was described as a “female” complainant.

The Deputy Chief decided to transfer the file to the Officer in Charge of the CIB. Staff Sergeant Brunet had recently succeeded Staff Inspector McDonald as the Officer in Charge of the CIB, on January 11, 1993. The transmittal slip of the file sent by Deputy Chief St. Denis states:

I realize the heavy workload in CIB but *this could possibly turn into an Alfred type situation*. Therefore please assign ASAP. The new investigator should see and discuss this with Sgt. Lortie.
(Emphasis added)

Deputy Chief St. Denis was very concerned about the delays in this investigation. He had lived near Alfred and was “concerned that ... maybe we had the same thing in our own back door.” There was a reform school in Alfred at which members of the clergy were alleged to have abused boys. Staff Sergeant Brunet thought that if the Silmsers case was possibly similar to the Alfred situation, there could be multiple victims and multiple perpetrators.

As Chief Shaver testified, the concern was that this could be the “tip of the iceberg.” The strategy, he explained, was to start the investigation as quickly as possible and to determine if reasonable and probable grounds existed to lay a charge against the alleged perpetrators.

One month had lapsed since the December 9, 1992, Silmsers call to the Cornwall police and the complainant still had not yet been interviewed by the police. At the bottom of the transmittal slip dated January 8, 1993, Deputy Chief St. Denis noted, “[O]ne month already went by on this.”

Staff Sergeant Brunet received the transmittal slip on January 12, 1993. He immediately went to speak with Sergeant Lortie to discuss the Silmsers file. Ironically, Sergeant Lortie had returned to work and was at the CPS on January 12. He explained to Staff Sergeant Brunet that an interview with David Silmsers had been arranged for January 18, 1993. Although Sergeant Lortie was available to continue with the investigation, Staff Sergeant Brunet understood that the Deputy Chief wanted the CIB to assume responsibility for the file. Luc Brunet considered Sergeant Lortie a very experienced investigator. Deputy Chief St. Denis testified at the Inquiry that “in hindsight ... if I’d have known Lortie was going to be back sooner ... I wouldn’t have changed that. I would have left that investigation to Lortie.”

On January 13, 1993, Staff Sergeant Brunet decided to assign the Silmsers file to Constable Heidi Sebalj who had only one year of experience in the Criminal Investigation Bureau. She was the most junior officer in the CIB.

Staff Sergeant Brunet had serious resource problems when he became the Officer in Charge of the CIB in January 1993. He thought about the officers available in the CIB. Sergeant Ron Lefebvre and Constable Kevin Malloy, senior

officers, were more experienced in sexual assault investigations than was Constable Sebalj. Sergeant Lefebvre had investigated the Father Deslauriers case in the 1980s. These officers were occupied at that time preparing for a preliminary inquiry of a homicide of a young girl, which in Staff Sergeant Brunet's view "was taking a toll on them." Staff Sergeant Brunet determined that these officers would not be able to work on the Silmser file in a timely fashion. At that time, Constable Sebalj had about twenty-five to thirty files, and Sergeant Lefebvre had about sixty to seventy files. Constable Sebalj, although less experienced, was keen on improving her skills in sexual assault investigations. Staff Sergeant Brunet thought that with the guidance of Sergeant Lefebvre, Constable Malloy, and himself, Constable Sebalj had the ability to investigate the allegations of sexual abuse against Father MacDonald and probation officer Ken Seguin. She could begin work on the file immediately. Staff Sergeant Brunet met with Constable Sebalj, showed her the relevant documents, and informed her that Sergeant Lefebvre and Constable Malloy were available to assist and provide guidance on the Silmser file. He instructed the Constable to enter the incident on OMPPAC for this investigation, which she did.

As Staff Sergeant Derochie stressed in his evidence, Sergeant Lortie returned to work after his surgery on January 12 and Constable Sebalj was assigned the Silmser file on January 13, 1993. In his review of the investigation, Staff Sergeant Derochie inscribed in his notes, "[W]hat was gained from pulling Lortie from the case"? He was critical of the fact that the Silmser file, a potentially complicated and high-profile case that required an experienced officer, had been removed from Sergeant Lortie's responsibility and assigned to Constable Heidi Sebalj: "I wasn't pleased with ... that whole matter, that nothing was gained ... by taking it from Lortie and giving it to Sebalj. We didn't save any time here at all."

The importance of this became even more apparent when the complainant requested a male police officer. David Silmser was uncomfortable discussing with a female police officer the details of the sexual abuse by the priest and probation officer. Staff Sergeant Derochie could not understand why Sergeant Lortie did not resume the investigation when he returned from his surgery on January 12, 1993. As Staff Sergeant Derochie stressed in his testimony, Sergeant Lortie had sixteen years of experience as an investigator and the victim had asked for a male officer. Mr. Silmser's requests for a male police officer is further discussed in the following section.

David Silmser Requests a Male Officer

On January 13, 1993, the day she was assigned the investigation of the Silmser allegations of sexual abuse by Father MacDonald and Ken Seguin, Constable Sebalj telephoned David Silmser. It was clear from the very first contact with

the complainant that Mr. Silmsers was uncomfortable discussing the allegations of sexual abuse in the presence of a female police officer. Constable Sebalj's notes state: "t/c [telephone call] to victim—reluctant to speak w/ female." Constable Sebalj assured Mr. Silmsers at the interview scheduled for January 18 that a male police officer, Constable Malloy, would also be present. David Silmsers also made it clear in this call with Constable Sebalj that he had spoken with the Bishop in Ottawa and that he "wanted only an apology."

It is important to note that despite the Deputy Chief's concern about scheduling an interview with the alleged victim promptly and Staff Sergeant Brunet's discussion with Constable Sebalj about arranging to meet with David Silmsers before January 18, the interview date remained the same. Moreover, the interview was scheduled to take place in Cornwall, not Bourget, as promised by Sergeant Nakic to David Silmsers in the December 9, 1992, call.

The January 18, 1993, interview with Mr. Silmsers did not take place as he had car problems. It was rescheduled for January 26, 1993, but Mr. Silmsers did not appear. When Constable Sebalj called his home, Mr. Silmsers said he'd forgotten about the appointment. He told the CPS Constable that he was not pleased with how things were going and that he had asked for a male officer. Inscribed in Constable Sebalj's notes is the following:

T/c to victim's residence ... said "as long as I've got you, may as well tell you, I'm not happy with the way this is going" ... *stated for 1 thing I asked to talk to a man.* (Emphasis added)

Mr. Silmsers told Constable Sebalj that he "would take it up with the Chief."

David Silmsers Contacts the Cornwall Police Chief, Repeats Request for a Male Officer

On January 26, 1993, when David Silmsers called, Chief Claude Shaver said he was unaware that on two previous occasions the complainant had expressed his concern about being interviewed by a female officer about the sexual abuse. Mr. Silmsers, who was highly agitated, made it clear to Chief Shaver that he did not want to be interviewed by a female police officer. He raised his voice and made denigrating comments about females and Constable Sebalj. The Chief tried to calm him, but the complainant continued to raise his voice. He told Mr. Silmsers that the CPS would investigate the matter as quickly as possible and that he would consider Mr. Silmsers's request for a male officer.

Mr. Silmsers testified that although he liked Constable Sebalj and thought she was a nice person, he was simply uncomfortable discussing the sexual abuse with a woman:

I just didn't feel comfortable. It was not because of her as a person. Actually, later on, I got along with Heidi very well. I thought Heidi was a super lady. But as a young man, trying to talk about something like this, and you are still ashamed of it, it is very hard to talk to a woman, I found.

No policy existed at the Cornwall Police Service regarding the assignment of same-sex officers when requested by a complainant or victim in a sexual assault case. Nor was there a practice in the police force of accommodating the gender preference of male victims of abuse when interviewed by the police. This was confirmed by Chief Shaver. In my view, a policy should be developed to ensure that in cases of sexual assault, the complainants and other alleged victims be permitted to select the gender of the officer who will interview them. This will not only ensure that the trauma of the complainant and alleged victims is reduced but will also foster a more complete and accurate account of the alleged sexual abuse, which will enhance the success of a prosecution that may ensue.

The following morning, Chief Shaver met with Constable Sebalj and Sergeant Lefebvre to discuss the call from David Silmsr. Chief Shaver had no recollection of Constable Sebalj mentioning that Mr. Silmsr, on two previous occasions, had asked to be interviewed by a male police officer. The Constable told the Chief Shaver that the complainant was volatile and would often raise his voice and become agitated and angry. Chief Shaver acknowledged at the hearings that it is important to accommodate alleged victims of abuse and ensure that they are as comfortable as possible so that they will disclose the abuse in a detailed and comprehensive manner. The former Cornwall police chief conceded that he did not think about it in this way at that time. In this discussion, it was decided that Constable Kevin Malloy and Sergeant Ron Lefebvre would, with Constable Sebalj, attend the interview of Mr. Silmsr to obtain his initial statement. But the Chief decided that Constable Sebalj would nevertheless remain responsible for the investigation.

When Claude Shaver was asked at the hearings if he thought it was important for the Cornwall Police Service to accommodate the gender preference of a complainant in such cases, he replied: "[I]n light of what—of everything that's gone on and the reason for the Inquiry and everything, sure, I think that's a very good point. It's a very, very good point." In my view, Chief Shaver should have taken measures to ensure that David Silmsr, an alleged victim of sexual abuse in his youth by a priest and a probation officer, was interviewed by male police officers without the presence of a female officer.

After the meeting with the Chief, Sergeant Lefebvre telephoned David Silmsr to schedule an interview for the following day, January 28, 1993.

At the Silmsers interview, at which Sergeant Lefebvre, Constable Malloy, and Constable Sebalj were present, Mr. Silmsers again reiterated that he was not comfortable describing the details of the sexual abuse with a female officer. Yet Constable Sebalj told Mr. Silmsers that it was important and necessary for her to be at the interview, to which he replied, “I’ll try, it was hard for me even to tell my wife.”

It was obvious that David Silmsers was very uncomfortable and distressed about disclosing to a woman details of the sexual acts committed by a priest and probation officer during his youth. In my view, the Cornwall Police Service should have accommodated his request for at least two important reasons. First, it would have lessened Mr. Silmsers’s anxiety, and second, it would have enhanced the ability of the complainant to provide intimate and personal details of the sexual assaults allegedly perpetrated on him by Father MacDonald and Ken Seguin if he had been comfortable with the officers in the interview room. This would have fostered the ability of the CPS to obtain the necessary information for their investigation.

Another matter that demonstrated poor judgment on the part of the Cornwall Police Service was that all three officers at the Silmsers interview took notes. The officers should have been aware that three sets of notes were likely to contain some differences in the comments attributed to the complainant in the interview. Staff Sergeant Brunet testified that the common practice at police interviews at that time was generally “one note taker and one interviewer.” When asked about three officers taking notes at the Silmsers interview, Staff Sergeant Brunet’s response was, “[P]ersonally, I don’t recommend it.” Staff Sergeant Derochie agreed that this was not an ideal way to conduct an interview.

Constable Malloy acknowledged at the hearings that it was possible that he and Sergeant Lefebvre had recorded Mr. Silmsers’s statements slightly differently.³³ In a criminal prosecution against the alleged perpetrator, the complainant’s credibility could be attacked by defence counsel if the three sets of police notes contained some disparities. Constable Malloy agreed that if the interview had been taped or officially transcribed, this would have ensured that Mr. Silmsers’s statements were accurately recorded.

In my view, it is very important that CPS officers receive appropriate training on note taking and that a protocol be developed on recording information by videotape or audiotape from witnesses in police interviews. It is important that the technology—video and audio—used by officers is of high quality to ensure that the words, gestures, and body language of the person interviewed is accurately and fully recorded.

33. This also led to some disclosure problems, as Sergeant Lefebvre’s notes were misplaced for several years.

In the over three-hour interview, Mr. Silmser discussed the sexual abuse perpetrated by Ken Seguin, who had formerly been his probation officer. Mr. Silmser explained that he had been living on the street at the time without shelter or food and that Mr. Seguin offered him food and a room in exchange for sexual favours. Mr. Silmser described Mr. Seguin's home and car at the time that he was sexually abused. As Constable Malloy commented, it was serious that a probation officer, someone working in the justice system, had allegedly participated in these sexual acts with a former probationer.

Mr. Silmser also described the alleged acts of sexual assault engaged in by Father Charles MacDonald. Mr. Silmser told the three police officers that he had spoken with Monsignor Donald McDougald and stressed that "all he wanted was a letter of apology from him for what had happened in the past."³⁴ As Constable Malloy said in his testimony, it seemed that Mr. Silmser in this interview was seeking an apology from the clergy at this time rather than a civil settlement. David Silmser reported that on the morning of the police interview, Father Charles MacDonald's lawyer, Malcolm MacDonald, had called him. It was apparent to the officers that Mr. Silmser was talking to representatives of the Church regarding the sexual abuse by Father Charles MacDonald. Constable Malloy agreed that it probably would have been a "good idea" to caution and explain to Mr. Silmser the dangers of making disclosures to third parties, such as the Church. For example, inconsistent statements could be used by defence counsel to impugn the credibility of the complainant. This could hinder the success of a criminal prosecution of the priest.

It was also clear from this January 1993 interview that David Silmser was prepared to pursue criminal charges against the alleged perpetrators. Inscribed in Constable Malloy's notes is, "Willing to go to court, will support a prosecution '100 per cent.'" This statement was made after Mr. Silmser had described the sexual acts committed by Father MacDonald and Ken Seguin. Mr. Silmser did not make any distinction between the two alleged perpetrators at the time he made the statement to the three officers.

At about 12:30 p.m., Mr. Silmser was asked by the officers if he would like to take a break for lunch. The complainant replied that he needed to pick up his wife later that day. Although there still appeared to be time for Mr. Silmser to complete the formal statement, the three officers decided to hand Mr. Silmser a

34. As I discuss in the chapter on the institutional response of the Diocese of Alexandria-Cornwall, David Silmser spoke with Monsignor Schonenbach about the sexual abuse in December 1992. Monsignor Schonenbach wrote a letter to Monsignor McDougald that stated, "He told me he was raising the matter at this time because he wanted to lose the label of being a bad person, he said: 'for starters, I would like a letter from Father MacDonald acknowledging what he did so that I could show this to my mother.'"

blank form and ask him to fill it out and return it to the Cornwall police. Constable Malloy conceded that it would have been preferable to have David Silmsers complete the statement on the day of his interview. It was the CPS practice at that time for a statement to be taken directly by the officers. As Staff Sergeant Derochie made clear at the hearings, he did not endorse the practice of instructing victims in assault cases to write their own statements. Constable Malloy also agreed that by having the victim prepare his statement without any guidance from the police, it increased the possibility of discrepancies between that statement and the previous statement he made to the police in the interview; again, this could impair the credibility of the victim in a subsequent prosecution.

In my opinion, this also was not an exercise of good judgment by the CPS officers. Moreover, the officers should have understood that it may be very difficult for child victims of historical sexual abuse to provide written statements to the police. OPP Detective Inspector Tim Smith testified that he also disagreed with this practice. As I discussed earlier, in the chapter on the impact of child sexual abuse, these victims of historical child abuse may not have the literacy skills or emotional strength to complete such a document. Mr. Silmsers stated that he was not given guidance by the CPS on how to write the statement, and he described the difficulty he had in reliving the painful experiences and committing them to paper:

It was a very difficult task. It took approximately two or three weeks, I forget how long it took me to actually sit down; I dreaded to sit down and write it because I had to relive everything and to relive it again brought pain at that time, a lot of pain.

Constable Kevin Malloy did not distribute his notes of this interview with Mr. Silmsers to other CPS officers involved in the Silmsers case. These notes remained on his desk, and this written record of the Silmsers interview was not provided to others involved in the investigation of Mr. Silmsers's allegations of child sexual abuse by a priest and a probation officer.³⁵

Call From Father Charles MacDonald's Lawyer

A few days after the interview, David Silmsers called Constable Malloy. In the February 1, 1993, call, Mr. Silmsers said that he had been contacted by Monsignor McDougald, who had asked David Silmsers to attend a meeting with him, three priests, and some other people. Constable Malloy considered it "suspicious that

35. As of March 8, 1993, Constable Malloy was off on sick leave. He was gone until May 1996.

they wanted to meet with him.” The CPS officer cautioned Mr. Silmsner against attending this meeting of clergy and others affiliated with the Diocese. Mr. Silmsner willingly accepted this advice and indicated that he would not attend this meeting.

Malcolm MacDonald, the lawyer representing Father Charles MacDonald, contacted the CPS. Constable Malloy, surprised to receive this call from the defence lawyer, spoke to Malcolm MacDonald on February 1, 1993. Mr. MacDonald indicated that David Silmsner had talked to Monsignor McDougald and Ken Seguin on the day Mr. Silmsner was interviewed by the police. He said that Mr. Silmsner seemed at that time to be in an intoxicated state. Malcolm MacDonald proceeded to malign Mr. Silmsner; he told the CPS officer that Mr. Silmsner was a “smooth talker,” that he had been involved in an embezzlement in Ottawa, and that he had stolen a car. Inscribed in Constable Malloy’s notes was “non-validated info at this time.” Constable Malloy told Mr. MacDonald that Constable Sebalj was responsible for the investigation and that he would convey this information to her. Constable Malloy considered this call from the defence lawyer “unusual ... kind of out of the ordinary.”

Constable Sebalj told Staff Sergeant Brunet that David Silmsner was meeting with the Diocese and that there were discussions about a civil settlement. The Constable expressed concerns about Mr. Silmsner’s motives. Staff Sergeant Brunet instructed Constable Sebalj not to discuss with or advise the complainant on any prospective civil settlement with the Church:

... I felt it was very dangerous territory for the police to give any instructions whatsoever in reference to civil settlements.

I didn’t feel that it was our position to give them advice that “you should/you shouldn’t” see them, you shouldn’t meet with them or—I really didn’t feel that it was proper for us to advise.

So what I told Heidi at the time is advise him that whatever he does civilly is totally his business. However, you have to concentrate on the criminal allegations and you have to continue the investigation that way, so don’t get involved in the civil settlement or any civil negotiations or anything like that and don’t advise them on that.

Contact Between David Silmsner, Constable Sebalj, and Father MacDonald’s Lawyer: Proposal of a Civil Settlement by the Diocese

In a call on February 3, 1993, Mr. Silmsner told Constable Sebalj that the Diocese had scheduled a meeting with him for February 9, 1993. Mr. Silmsner expressed

reservations about the meeting and was uncertain whether he would attend this meeting with Church officials. Constable Sebalj simply asked David Silmsers to bring his statement to the police before meeting with the Diocese and to contact the school board to obtain his school records. Constable Sebalj did not caution the complainant about meetings with Church officials to discuss the allegations of sexual abuse.

When Constable Sebalj met with Mr. Silmsers on February 9, 1993, he discussed his meeting with the Diocese and the lawyer representing the Church. Mr. Silmsers said he thought the Church officials “believed” him, and he mentioned that the Diocese had offered him “psychological help.” He also told Constable Sebalj that he might proceed civilly after the criminal process was completed. Mr. Silmsers also told her that he had not yet completed his written statement.

The following day, David Silmsers telephoned Constable Sebalj to advise her that he had contacted Ken Seguin, who was “running scared”; he had told the probation officer that criminal charges would be laid against Father MacDonald. Constable Sebalj’s notes of the February 10, 1993, telephone call state: “T/C from V[ictim] advises he called Seguin who is ‘running scared’ advised him he’s laying charges on McDonald—stated he’s getting very mad.”

As Staff Sergeant Derochie stated in his evidence, there does not appear to have been any follow-up by the officer with regard to this statement: no CPIC check and no interview of Ken Seguin by Constable Sebalj. In fact, Mr. Seguin was never investigated by the Cornwall police with regard to the Silmsers allegations of sexual assault. I discuss this further in the following section.

On February 16, 1993, David Silmsers provided his written statement to Constable Sebalj. In the eight-page handwritten statement, Mr. Silmsers stated that he became an altar boy at St. Columban’s Church when he was twelve years old and came into contact with Father Charles MacDonald. He described the grooming, sexual advances, and details of the sexual acts. He also discussed the repeated sexual molestation by Father MacDonald’s close friend, Ken Seguin. In the statement, David Silmsers described the devastating impact of this sexual abuse on his life, which included the following: “My youth at this time was finished. I hated everything, authority, school, my parents, everything.”

He told Constable Sebalj that Monsignor McDougald had called him the previous day but that he had not discussed a settlement with the Church official. It is noteworthy that from February 22, 1993, until September 1993, there is no mention of a civil settlement by David Silmsers. On February 18, 1993, Mr. Silmsers told Constable Sebalj that he had contacted the Church to obtain a record of altar boys who served at St. Columban’s Church at the same time he did but related that he had not been successful.

Mr. Silmsen came to the Cornwall police station on February 24 for an arranged meeting and asked Constable Sebalj when criminal charges would be laid. She told him that the investigation was only “just beginning.” Two and a half months had passed since he had made his initial complaint to CPS Sergeant Nakic on December 9, 1992. Constable Sebalj had been responsible for the file since January 13, 1993, yet she had not interviewed any other possible victims, witnesses, or the suspects.

Father MacDonald's Lawyer Indicates His Client Is Prepared to Take a Lie Detector Test

On February 25, 1993, Malcolm MacDonald, the lawyer representing Father Charles MacDonald, informed Constable Sebalj that his client was prepared to take a lie detector test. Constable Sebalj discussed the prospect of a polygraph test with her supervisor, Staff Sergeant Brunet. It was his opinion that it was premature to have the suspect undergo a polygraph test at this time. Constable Sebalj had not yet interviewed other possible victims or witnesses. Staff Sergeant Brunet thought that Constable Sebalj should interview other altar boys at the Church and other boys who had been on Church retreats before the priest took a polygraph test. Constable Sebalj was just beginning the investigation. All the Cornwall Police Service had at that point, he explained, were the allegations of the complainant against the alleged perpetrators. In his view, the optimal time for a lie detector test is after the completion of the investigation, as the police then have information with which to pose direct questions to the alleged perpetrator. At that time, Staff Sergeant Brunet explained, the police can assess via the test if the suspect is being truthful. Staff Sergeant Brunet agreed that it might also be useful to conduct polygraph testing at the conclusion of an investigation if the police do not have reasonable and probable grounds to lay a charge. But none of this happened.

Despite the offer by defence counsel in February 1993, Father Charles MacDonald was never asked by the CPS to take a polygraph test. Not only did Father MacDonald not undergo a lie detector test but he was never even interviewed by the Cornwall police. Nor was the other alleged perpetrator of sexual abuse, Ken Seguin, interviewed by the Cornwall Police Service.

Malcolm MacDonald spoke to Constable Sebalj several times. Staff Sergeant Derochie testified that it was unusual for the investigating officer to have several contacts with a defence lawyer before criminal charges were laid. The risk for police officers, he said, is that the officer could be called as a witness by defence counsel.

Other Victims of Father MacDonald, CPS Decides Not to Pursue the Investigation of Ken Seguin

In March and April 1993, Constable Sebalj interviewed individuals who disclosed that they, too, had been sexually assaulted by Father Charles MacDonald in their youth.

About two weeks before she interviewed C-3 on March 12, 1993, Constable Sebalj had a discussion with Crown Attorney Murray MacDonald about the case. The Crown attorney expressed concern about reasonable and probable grounds to lay criminal charges. He suggested that Constable Sebalj meet again with David Silmser, and he asked her to keep him up to date on this investigation.³⁶

David Silmser spoke to Constable Sebalj in early March and again asked the officer if she had sufficient evidence to lay criminal charges. According to Constable Sebalj, she told the complainant that she did not. He told the CPS Constable that he was no longer in a rush and that “if it takes 3, 6, 8 months,” that was fine with him.

On March 4, 1993, Constable Sebalj asked Constable Brian Snyder to conduct an analysis of Mr. Silmser’s statement. After reviewing the statement, Constable Snyder concluded that there was veracity regarding the allegations of historical sexual assault made by David Silmser. He suggested that Constable Sebalj obtain more details from the complainant on specific portions of the statement. Constable Snyder did not submit a report to Constable Sebalj, nor did he have notes of his assessment when he spoke to Constable Sebalj about the truthfulness of the Silmser statement. He testified that he conducted the statement analysis “on my own time.” Moreover, Constable Sebalj had gone to Constable Snyder’s home to request that he conduct this statement analysis.

When Constable Sebalj and Sergeant Lefebvre met with David Silmser on March 10, 1993, for approximately three hours to discuss further details of his statement, the complainant said he did not feel he could focus on both Father MacDonald and Ken Seguin at the same time. Inscribed in Constable Sebalj’s notes is: “I don’t think I can deal w/ that too right now. Re Seguin.” As Staff Sergeant Brunet explained, it was not that David Silmser did not want to pursue a criminal investigation of Mr. Seguin; rather it was just that he did not want to pursue both investigations at the same time. The complainant wanted to deal with the Father MacDonald investigation first. Staff Sergeant Brunet discussed this with Sergeant Lefebvre; it was decided that it was important to “build some rapport” with Mr. Silmser and to “try and make him feel comfortable,” and “if he was ready to deal with Father Charlie, we would start with that investigation

36. Murray MacDonald’s involvement in the Silmser case is also discussed in the chapter on the institutional response of the Ministry of the Attorney General.

and ... take it one step at a time.” The following day, David Silmsers told Constable Sebalj he was willing to take a polygraph test.

The allegations of sexual abuse against Ken Seguin were not pursued or investigated by the Cornwall Police Service. Other possible victims of the probation officer were not interviewed, nor was the suspect, Mr. Seguin. In addition, a decision was made not to contact Mr. Seguin’s employer, the Ministry of Correctional Services. Staff Sergeant Brunet and Sergeant Lefebvre decided that because the complainant did not want to proceed with the Seguin investigation at that time, the CPS did not have the authority to contact the Ministry to alert government officials to allegations by a former probationer that he had been sexually abused repeatedly by his probation officer, Ken Seguin. Staff Sergeant Brunet said the following in his testimony:

... We had a lengthy discussions [sic] of the pros and cons; if we had the authority to do it and at the end, we both agreed that with the allegations being made, but no investigation and him not being ready ... to deal with an investigation at this point; we didn’t feel that we had the authority to advise his employer and tell him that we got a complaint but ... we’re not doing an investigation; the complainant’s not ready to proceed with an investigation. We felt that we didn’t have the authority ...

On March 12, 1993, a former altar boy, C-3, disclosed to Constable Sebalj that Father MacDonald had sexually molested him. In subsequent discussions, C-3 made it clear that he did not want to provide a statement to the police or become involved in a prosecution, as this could have a serious adverse impact on his adult life. Constable Sebalj provided C-3 with a blank statement in early April and told him that it would be very helpful to the police investigation of Father MacDonald if he could provide a written statement. Again, an alleged victim of child sexual abuse by a priest was simply given a blank statement and told to describe the allegations. C-3 asked Constable Sebalj to “keep in touch” and to let him know if she “located any further victims.” Constable Sebalj never obtained a statement from C-3. This was the last contact between Constable Sebalj and C-3.

Constable Sebalj spoke by telephone with Father MacDonald’s lawyer, Malcolm MacDonald, on March 17, 1993. She made inquiries about the dates that the priest was at St. Columban’s Church, the period when David Silmsers served as an altar boy, and the dates of retreats in St. Andrews. In my view, the CPS Constable should not have relied on the defence lawyer to provide information that she could have obtained on her own in the investigation of Mr. Silmsers’s allegations of sexual abuse.

Another disclosure by a former altar boy of sexual molestation was made to Constable Sebalj on April 3, 1993. C-56 told her that Father MacDonald had

touched him in private areas when they were driving back from Apple Hill. He was eighteen years old at the time of the abuse. This victim was prepared to provide a formal statement and testify as a witness but did not want to initiate a criminal complaint for the sexual acts committed on him by the priest. C-56 said at the interview that he had “no problem doing whatever is needed.” Staff Sergeant Brunet acknowledged that the interviews of C-3 and C-56 lent credibility to the allegations of David Silmser. Constable Sebalj also made contact with two other altar boys. She learned from these discussions that Father MacDonald kept pornographic magazines under his bed. Unfortunately, however, after April 1993, no further investigative steps were taken by Constable Sebalj for four months. No other interviews were conducted with other potential victims or witnesses. The investigation remained dormant until the end of August 1993.

Constable Sebalj was away on a course toward the end of May and for three weeks in June 1993. During that time, Staff Sergeant Brunet was preoccupied with managing a homicide case.

It was not until June 29, 1993, that Staff Sergeant Brunet met with Constable Sebalj to discuss the Silmser and other files. He noticed that there had not been much progress on Constable Sebalj’s files and that many of her cases were overdue. They discussed the Silmser file at the June meeting. Constable Sebalj claimed that she was waiting for witnesses to get back to her. She said that she felt very burdened. Staff Sergeant Brunet testified that he was not aware at this June 1993 meeting that Constable Sebalj had not done any work on the Silmser case since April. He did not review her notebook. There were no notes on OMPPAC.

In late July or early August 1993, at a morning meeting of CPS management, Chief Shaver made it clear that he was dissatisfied with the slow progress on the Silmser file. He instructed Staff Sergeant Brunet to take measures to ensure that the investigation was given immediate attention and quickly completed. Staff Sergeant Brunet had a serious conversation with Constable Sebalj, who explained that she was waiting to meet with a Crown from outside the jurisdiction to ask his opinion on whether reasonable and probable grounds existed to lay a charge against Father Charles MacDonald. Despite discussion about a possible meeting with Crown Attorney Bob Pelletier from L’Orignal, this never took place.

At that time, Staff Sergeant Brunet looked for notes on the Silmser investigation on OMPPAC, but Constable Sebalj still had not recorded her investigation on the system as required. As Staff Sergeant Derochie stressed at the hearings, the Constable was required to insert information on the investigation as it proceeded. Staff Sergeant Brunet should have taken measures to ensure that Constable Sebalj was recording information on the Silmser file on OMPPAC and that she completed the investigation in an expeditious manner.

***Constable Sebalj Receives a Call From Father MacDonald's Lawyer:
Client Prefers to Be Escorted Rather Than Handcuffed When Arrested***

Constable Sebalj received a telephone call from Father MacDonald's lawyer in the third week of August. She had not worked on the Silmsers file for four months. In the August 23, 1993, call, Malcolm MacDonald asked Constable Sebalj for an update on the status of the Father MacDonald investigation. She told defence counsel that she intended to meet with the Crown. Malcolm MacDonald then asked if his client could be "escorted as opposed to being hand-cuffed" when he was arrested. In my view, Malcolm MacDonald was monitoring the police investigation. In August 1993, he was trying to persuade the Diocese to enter a financial settlement with Mr. Silmsers. As I discuss in detail in the following chapters of the Report, Malcolm MacDonald at that time was involved in arranging an illegal financial settlement between the Diocese of Alexandria-Cornwall, Father MacDonald, and the alleged victim, David Silmsers, which would have the effect of ending the criminal investigation. Malcolm MacDonald subsequently pleaded guilty on September 12, 1995, to attempt to obstruct justice in a criminal prosecution.

On August 24, 1993, Constable Sebalj received a call from David Silmsers, who asked for a progress report on the Father MacDonald investigation. According to Constable Sebalj's notes, she told Mr. Silmsers that she was waiting for a meeting with a Crown outside Cornwall to review the file and he replied that he was "not in any hurry." Constable Sebalj asked Mr. Silmsers if he was receiving counselling, to which he replied that the "Church won't help" and he had "no \$." The Constable asked Mr. Silmsers in that call to obtain his school records. In my view, Constable Sebalj should have had Mr. Silmsers sign a release so that the CPS could obtain this information months earlier. As I recommend in my Phase 2 Report, a victim liaison person should be appointed for every sexual assault case. Had that been the situation in 1993, Constable Sebalj and the victim liaison would have identified the need for counselling and could have directed the complainant to appropriate services.

***Constable Sebalj's Supervisors Unaware No Work Done on the
Silmsers File***

Staff Sergeant Brunet testified that he met with Constable Sebalj on August 24, 1993. At that time he was unaware that Constable Sebalj had not worked on the Silmsers file since the end of April 1993. When he asked for an update on the investigation, Constable Sebalj again said that she was waiting for the Crown's Office to get back to her.

Staff Sergeant Brunet was anxious for her to meet with the Crown as soon as possible. There had been disclosures by two former altar boys, C-3 and C-56, of sexual abuse by Father Charles MacDonald. The Staff Sergeant was hopeful that the Crown would help Constable Sebalj to develop the reasonable and probable grounds to lay a criminal charge against Father MacDonald.

David Silmsner Enters a Civil Settlement With Father MacDonald and the Church

It was on September 3, 1993, that Sean Adams, Mr. Silmsner's lawyer, called the Cornwall police and spoke to Staff Sergeant Brunet. The CPS Staff Sergeant testified that Mr. Adams relayed that Mr. Silmsner no longer wished to pursue the criminal investigation of Father Charles MacDonald. Staff Sergeant Brunet made it clear to Mr. Adams that he was not accepting this direction. He told Mr. Silmsner's lawyer that he would be instructing the investigating officer to meet with Mr. Silmsner to discuss the reason he wanted to withdraw his complaint of sexual assault to the Cornwall police.

That morning, Staff Sergeant Brunet also received a call from Father MacDonald's lawyer. This was followed up with a letter that day from Malcolm MacDonald:

This will confirm our telephone conversation of this morning. I am enclosing a Statement prepared by Sean Adams, Solicitor for David Silmsner and signed by David Silmsner.

I understand that Mr. Adams was advised by you that David Silmsner should speak to Cst. Sebalj personally and I understand that the Constable will not be back until some time next week. David Silmsner indicated to Mr. Adams that he would be available any time she wants to see him.

Staff Sergeant Brunet was concerned that Mr. Silmsner was not continuing with the criminal investigation because of the civil settlement with Father MacDonald and the Diocese. The CPS officer was unaware that one of the conditions of the settlement was the withdrawal by Mr. Silmsner of the criminal complaint. Staff Sergeant Brunet neither reviewed nor instructed Constable Sebalj to examine the settlement documents.³⁷ In my view, he should have instructed her to obtain the settlement documents.

37. This is discussed in detail in the chapter on the institutional response of the Diocese of Alexandria-Cornwall.

Staff Sergeant Brunet decided to contact Crown Attorney Murray MacDonald. He had two main issues he wished to discuss: (1) the legality of the settlement—the complainant’s withdrawal from the criminal investigation as a result of the fact that Mr. Silmsers had reached a civil settlement with the alleged perpetrator and the Diocese; and (2) whether the criminal prosecution could proceed with an unwilling complainant. Staff Sergeant Brunet claimed that when he made the September 8, 1993, call, it did not occur to him that Murray MacDonald had previously indicated that he had a conflict of interest on this file because of his own involvement with the Catholic Church. In this call, Murray MacDonald advised Staff Sergeant Brunet that a prosecution could not proceed without the full cooperation of the victim.³⁸

Staff Sergeant Brunet testified that after briefing Chief Shaver and Deputy Chief St. Denis, he was instructed to obtain the Crown’s opinion in writing. In a letter dated September 9, 1993, to Mr. Murray MacDonald, Staff Sergeant Brunet wrote:

Re: SEXUAL ASSAULT
Suspect: Charles MacDonald
Victim: David Silmsers

This will confirm our telephone conversation of September 8th, 1993.

Please be advised that on September 3rd, 1993, I received a letter from Mr. Angus Malcolm MacDonald (Barrister & Solicitor). Attached to his letter was a statement from Mr. David Silmsers stating that he received a civil settlement to his satisfaction and received independent legal advice before accepting it. He advised that he no longer wished to proceed further with criminal charges. He requested we close our file and stop further proceedings as far as he is concerned. This statement was signed by himself and witnessed by Mr. Sean Adams.

It is my understanding after our conversation that your office does not prosecute without the full cooperation of the victim. I am anxiously awaiting your direction. Please find attached, a copy of the letter and statement.

38. Murray MacDonald’s involvement in the Silmsers complaint is discussed in the chapter on the institutional response of the Ministry of the Attorney General.

Murray MacDonald responded with a letter dated September 14, 1993. The views he expressed and actions he took are discussed in the chapter on the institutional response of the Ministry of the Attorney General. His letter reads:

It is our policy not to compel victims of sexual crimes to proceed against their wishes. Also, the officer was tentative on the issue of R. and P.G. before this so-called “settlement.” Grounds are now even further obfuscated by the fact that he has evidently used this threat of criminal prosecution as a means of furthering his efforts to gain monetary settlement.

It is evident that Mr. Silmsen’s allegations suggest a very serious breach of trust by the alleged perpetrator. These concerns can, of course, be put to the suspect’s principals if you deem it appropriate. However, this case is fraught with (due to his own conduct) a very non-credible complainant, saddled with an evident ulterior motive for making these allegations.

It is, as you are aware, exceptionally difficult to put supportive victims through the sexual offence trial process. It is for policy reasons, not in the public interest to put a reluctant witness through the same process. This is especially so when that reluctant witness will be “crucified” in cross-examination.

Staff Sergeant Brunet instructed Constable Sebalj to follow up with Mr. Silmsen to determine if he had been coerced into withdrawing from the criminal investigation of Father Charles MacDonald. Constable Sebalj had received a call on September 9, 1993, from David Silmsen’s sister, Donna Jodoin, who told the Constable that her brother had received a \$32,000 settlement. She thanked Constable Sebalj on behalf of her brother, her mother, and herself for the work done on the case.

Constable Sebalj met with Crown Attorney Murray MacDonald on September 13, 1993. She continued to meet with Mr. MacDonald despite the fact that he had told her he had a conflict of interest on this file. Murray MacDonald had told the CPS Constable in the past that an outside Crown should be contacted for a final review and decision on the Father Charles MacDonald case. Yet Constable Sebalj never consulted an outside Crown. At this September meeting, Murray MacDonald told Constable Sebalj that she should satisfy herself that “Silmsen acted of his own free will.” Constable Sebalj arranged a meeting for September 13 with David Silmsen, but he did not appear.

CPS Investigation of Father MacDonald Ends: Sergeant Claude Lortie Expresses Dissatisfaction at September 1993 Morning Management Meeting

After receiving the Crown's letter, Staff Sergeant Brunet concluded that the Silmser complaint could no longer proceed and that criminal charges would not be laid against Father MacDonald. Chief Shaver was very upset when he learned about the civil settlement and Mr. Silmser's decision to withdraw from the criminal case. After the September 14, 1993, Crown letter was received, Chief Shaver decided to meet with Murray MacDonald: "I was concerned ... that we had our hands tied ... [M]y concern was I didn't know ... where I could go as a police force."

Murray MacDonald told the Cornwall Chief of Police that it was not illegal for a complainant to pursue a civil settlement at the same time as a criminal investigation. But what was not known at that time by the Crown was that the document that Mr. Silmser had signed required him to discontinue any civil or criminal proceedings against the alleged perpetrator. And that was illegal. This is discussed further in Chapter 11, on the institutional response of the Ministry of the Attorney General.

It was on September 28, 1993, shortly before the CPS morning management meeting, that Sergeant Lortie learned a decision had been made to terminate the Silmser police investigation. Sergeant Ron Lefebvre mentioned to Sergeant Lortie early that morning that Constable Sebalj was responsible for the Silmser investigation, which as discussed had originally been assigned to Sergeant Lortie. Sergeant Lortie had been under the mistaken impression that Sergeant Lefebvre was responsible for the file.

At the time of this discussion between Sergeant Lefebvre and Sergeant Lortie, Constable Perry Dunlop was working at a desk about fifteen to twenty feet away. According to Sergeant Lortie, Constable Dunlop became attentive when he heard Father Charles MacDonald mentioned. He asked his colleagues what had happened with this priest. Sergeant Lefebvre explained that he and Constable Sebalj had taken a statement from complainant David Silmser concerning allegations of sexual abuse by Father MacDonald. And as Sergeant Lortie said at the hearings, "[O]ut the door Perry goes. So I know he's headed—he wants to see the statement obviously."

Sergeant Lortie told Sergeant Lefebvre that he planned to raise the Silmser file at the 8:30 a.m. management meeting, which was beginning shortly. Before the meeting, Sergeant Lortie checked OMPPAC, which had very little information on the investigation, and saw that the Silmser investigation had been terminated.

At the management meeting on September 28, 1993, Sergeant Lortie asked Chief Shaver about the status of the Father Charles MacDonald investigation.

Chief Shaver deferred to Staff Sergeant Brunet, who appeared to Sergeant Lortie to be uncertain. It was Sergeant Lortie's impression that "nobody in the room ... [knew] what's going on with this thing." As Sergeant Lortie explained, "[T]hat's why I had that reaction ... [T]hat's why I responded the way I did."

Sergeant Lortie became visibly upset. He told Chief Shaver, Deputy Chief St. Denis, Staff Sergeant Brunet, and others at the meeting that he had learned the investigation of Father MacDonald was now closed and that no further action was being taken against the priest for the allegations of sexual abuse by David Silmser. Staff Sergeant Brunet told Sergeant Lortie that the Crown's advice had been sought and that, as a result, no criminal charges had been laid. Sergeant Lortie was not restrained in expressing his concern. He was critical of the police investigation and concerned about the responsibility of the Cornwall Police Service for not pursuing the allegations of childhood sexual abuse. Inscribed in his notes is: "[A]dvised the meeting that should other victims come up in the future ... that occurred since this investigation that our force would be responsible and that this whole investigation is a complete shame." At that time, Sergeant Lortie was unaware of the monetary settlement by the Diocese to David Silmser.

There was inconsistency in the testimony regarding comments made at this meeting. According to Staff Sergeant Brunet and Deputy Chief St. Denis, Sergeant Lortie asserted that the settlement was a "cover-up" by the Church. Sergeant Lortie made it clear that the investigation should proceed regardless of whether the victim was willing to participate in the prosecution. Staff Sergeant Brunet explained that after speaking to the Crown and being advised that the victim would not be compelled to testify in court, there was no prospect of conviction, and hence the investigation against Father MacDonald had come to an end. Staff Sergeant Brunet was upset, as Sergeant Lortie was "insinuating that the investigation wasn't done properly." Sergeant Lortie testified that he did not use the words "cover-up" at the September 28 morning management meeting. Chief Shaver similarly testified that although Sergeant Lortie was upset and critical of the investigation, Chief Shaver did not recall any statement regarding a "cover-up." Claude Lortie's comments clearly embarrassed Staff Sergeant Brunet, who was responsible for the Silmser file. Chief Shaver ended the meeting.

Staff Sergeant Brunet discussed Sergeant Lortie's remarks with the Deputy Chief after the morning meeting. He was upset with the criticism of the investigation. The Deputy Chief made it clear that he "had full trust in Brunet's judgment."

Chief Shaver, as mentioned, was concerned that the complainant had suddenly become unwilling to pursue the criminal investigation because the Diocese had offered a monetary payment. After the management meeting, he made arrangements to meet with Crown Attorney Murray MacDonald.

On September 29, 1993, David Silmsers arrived at the Cornwall police station to provide written notice that he wanted to end the investigation of the sexual abuse allegations against Father MacDonald. Staff Sergeant Brunet had instructed Constable Sebalj to meet with the complainant to ensure that he truly wished to withdraw from the criminal investigation.

As Constable Sebalj walked to the front counter of the police station to meet Mr. Silmsers, she saw Sergeant Lortie in the hallway and told him that David Silmsers had arrived to sign her notebook. Sergeant Lortie made it clear to Constable Sebalj that he did not agree “with what [she was] doing.” Constable Sebalj continued to walk to the front counter. Mr. Silmsers signed her police notebook, indicating that he had received a settlement with the Diocese to his satisfaction and that he wished the case closed against Father Charles MacDonald:

Sept. 29/93

I, David Silmsers, received a settlement to my satisfaction from the Cornwall Catholic Diocese. I wish that this matter against Charles MacDonald be closed. My lawyer Sean Adams will handle any further questions or inquiries about this matter.

David Silmsers

Mr. Silmsers apologized to Constable Sebalj for the work done on the investigation. Constable Sebalj inscribed in her notes that Mr. Silmsers had “weighed the options & chose the ‘sure thing.’” Mr. Silmsers told Constable Sebalj that Perry Dunlop’s wife had called him, which upset him.

CPS Officers Learn of Perry Dunlop’s Involvement in the Silmsers File

Constable Sebalj met with Staff Sergeant Brunet on September 29, 1993, to confirm that David Silmsers had retained a lawyer, that he was satisfied with the legal advice he had received, that he no longer wished to continue the criminal investigation of Father MacDonald, and that he had confirmed this in writing. Constable Sebalj also discussed Mr. Silmsers’s agitation about receiving a call from Helen Dunlop. It was at that time that she realized the reason Ms Dunlop was contacting the complainant. Constable Sebalj told Staff Sergeant Brunet that Constable Dunlop had asked her if he could read David Silmsers’s statement, which she willingly gave to him. It became apparent to the officers that Constable Dunlop had shared this statement with individuals outside the Cornwall Police Service.

After discussions with the Deputy Chief, Staff Sergeant Brunet asked Constable Dunlop to meet with him. Perry Dunlop said he was concerned that the allegations made by David Silmser had not been properly investigated. He had family in the St. Andrews area and was worried that his nephews and nieces were vulnerable to sexual abuse as described by David Silmser in this statement. Constable Dunlop also expressed concern about probation officer Ken Seguin. He mentioned the Varley incident, in which a probationer had apparently been drinking at Mr. Seguin's home hours before the homicide of one of his friends. This is discussed in fuller detail in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services.

Staff Sergeant Brunet advised Constable Dunlop that he was compromising his oath of secrecy as a police officer by sharing information with his wife about a case. He was breaching the *Police Services Act*. Staff Sergeant Brunet alluded to an incident in the mid-1980s involving damage to Constable Dunlop's police cruiser in which the Constable had been charged with neglect of duty and deceit under the *Police Services Act*.³⁹ He reminded Constable Dunlop that he had a family and cautioned him that if his wife did not stop this behaviour, this would escalate into a serious matter. Staff Sergeant Brunet cautioned the officer not to compromise his career. Constable Dunlop agreed to ask his wife not to make further contact with any of the alleged victims.

Staff Sergeant Brunet asked Constable Dunlop if he had a copy of the Silmser statement and other documents related to the case and, if so, to provide them

39. This is discussed in greater detail in this Report. Constable Perry Dunlop was found guilty of a major offence and two minor offences under the *Police Services Act* relating to events of September 1985. The major offence charge arose when Constable Dunlop reported that his cruiser was damaged in a hit and run by an unknown driver while parked in a hospital parking lot. An investigation determined that the damage had occurred when Constable Dunlop was driving the vehicle and hit a concrete post. It was the investigating officer's opinion that the Constable knew how the damage occurred and made a false report in order to avoid any liability. Constable Dunlop was charged with neglect of duty and deceit. During the investigation of these charges, Inspector Trew and Staff Sergeant Kirkey opened Constable Dunlop's locker to retrieve his notebook. In his locker they found two pieces of identification in civilian names. Apparently Dunlop had been instructed in May 1985 to locate the owners of the identification and had thus far failed to do so. He was charged with two counts of neglect of duty as a result. Dunlop pleaded guilty to one of the minor offences of neglect of duty relating to one of the pieces of identification and was sentenced for four hours forfeiture of leave. Constable Dunlop had a full *Police Services Act* hearing on the second count of the minor offence of neglect of duty, was found guilty, and was sentenced to eight hours forfeiture of leave. The major offence was adjourned while Constable Dunlop brought a *Charter* application requesting that the previous convictions be quashed and the charge relating to the major offence be stayed. The application was dismissed. Just prior to the new trial date, Constable Dunlop agreed to plead guilty and was sentenced to five days forfeiture of leave.

to him immediately. Constable Dunlop did not acknowledge or deny that he had such documents. No documentation was subsequently given to Staff Sergeant Brunet.

Constable Dunlop suggested to Staff Sergeant Brunet that the CPS make contact with the Bishop and Father MacDonald to ensure that the priest was removed from his parish.

Perry Dunlop asked Constable Quinn to come to his home. Michael Quinn was a friend and a colleague, as well as the representative of the Police Association. Constable Dunlop told Constable Quinn that he had given a copy of the David Silmsers statement to the Children's Aid Society. Constable Dunlop stated that if there was truth to the allegations made by David Silmsers, the perpetrators, who remained in the community, could victimize other children. Although Constable Dunlop had concerns that the CPS investigation had not been done properly, his prime concern was the risk of abuse to children in the Cornwall area. As Constable Quinn said, "his biggest concern" was:

... not so much what had taken place but what could be prevented from taking place. And his concern, at that time, was somebody has got to tell the CAS because these people are in contact through CAS, the— knowing that and that was his concern.

Constable Dunlop told Constable Quinn repeatedly:

"What would you feel like if somebody comes to you in five years or 10 years from now and says, 'My child was assaulted by that person and you people knew about it 10 years ago and did nothing'"; that was his concern.

Perry Dunlop was worried about both Father Charles MacDonald and Ken Seguin. Constable Dunlop also thought that the CPS investigation was sub-standard. He also told Constable Quinn that in his view it was immaterial to a criminal police investigation that the matter had been settled civilly with Mr. Silmsers. Constable Quinn agreed:

... [W]hether or not the person agreed to say, "Okay, it never happened anymore because I got paid some money," that does not negate the fact that there's a criminal offence had taken place and something should be done.

Perry Dunlop was concerned about the ramifications of his behaviour with respect to management at the Cornwall Police Service. Constable Dunlop told

Constable Quinn that Staff Sergeant Brunet had criticized him for his behaviour, had reminded him that he had an incident in the 1980s in which he had also acted inappropriately and that he had a family, and had cautioned him to be prudent in the future.

Constable Dunlop, according to Constable Quinn, was of the firm conviction that he should not be disciplined in any way, including informal counselling. Constable Quinn had advised Constable Dunlop that if he believed his conduct had been appropriate, he should not accept counselling. As explained by Michael Quinn at the hearings, it was necessary for Constable Dunlop to agree to counselling. This never occurred.

Chief Claude Shaver Meets With Crown Attorney Murray MacDonald

After the September 28 morning meeting, in which Sergeant Lortie was critical that the Silmsers' allegations were not being pursued by the police force, and after learning about the monetary settlement by the Diocese with David Silmsers, Chief Shaver arranged a meeting with Crown Attorney Murray MacDonald. He wanted to know whether in these circumstances, a criminal investigation by the CPS, could continue.

Chief Shaver testified that Murray MacDonald told him at the September 30, 1993, meeting that he had met with Constable Heidi Sebalj about the Silmsers' file on several occasions but that she did not believe there were reasonable and probable grounds to lay a criminal charge against Father Charles MacDonald. They discussed Mr. Silmsers' reluctance to participate further in the case. Chief Shaver raised the issue of protection of children in the community. According to Claude Shaver, Mr. MacDonald expressed the view that he did not think anything could be done about the Church or Mr. Silmsers' withdrawal from the criminal investigation. The Crown attorney encouraged the Chief to think about other ways in which children at risk could be protected. The Chief decided that he would contact Richard Abell, executive director of the Children's Aid Society.

Nine and a half months had passed since Mr. Silmsers had disclosed to the Cornwall police that he had been sexually molested by Father Charles MacDonald and probation officer Ken Seguin. Mr. Silmsers had contacted the police on December 9, 1992, and it took until September 30, 1993, for the Cornwall police to contact the Children's Aid Society to alert the agency that other children might be at risk of sexual abuse. Richard Abell was also trying to reach Chief Shaver on September 30.

Neither the Chief nor any of his officers made contact with the Ministry of Correctional Services despite the fact that Mr. Seguin continued to supervise youths and young people at the Cornwall Probation Office. Mr. Seguin was never interviewed or investigated by the Cornwall Police Service.

Father Charles MacDonald was also never interviewed by the CPS. Chief Shaver agreed that interviewing a suspect can change one's view as to whether reasonable and probable grounds exist to lay a criminal charge.

Cornwall Police Chief Learns That Perry Dunlop Gave David Silmser's Statement to the CAS

On October 1, 1993, Chief Shaver met with Richard Abell, the executive director of the CAS, and Angelo Towndale. Claude Shaver knew both these men. He had been on various committees with them, such as the CAS Bike-a-Thon. He had also been to Mr. Towndale's home for dinner on several occasions. Mr. Towndale was a member of the Cornwall Police Services Board.

At this meeting in early October Chief Shaver learned that Constable Dunlop had taken David Silmser's statement from the Cornwall Police Service to the Children's Aid Society without the knowledge or permission of his supervisors. Chief Shaver was very surprised and concerned. Inscribed in Mr. Abell's notes of the meeting is: "[H]e's got a big issue to deal with re Perry Dunlop going outside channels."

Mr. Abell told the Chief of Police that he considered David Silmser's allegations in the statement to be highly credible. As I discuss in the chapter on the institutional response of the Children's Aid Society, the focus and mandate of the CAS is on the protection of children at risk. Mr. Abell said that the CAS planned to proceed with an investigation of these issues. Claude Shaver explained that he had spoken to the Crown, who had indicated that there was no basis to pursue a criminal charge and to do so could result in malicious prosecution. Inscribed in Mr. Abell's notes is: "Chief says his dept. 'screwed up big time' on this—investigation not done—put on 'back burner'—Heidi Black⁴⁰ facing discipline."

Chief Shaver denied that he told the CAS executive director that the Cornwall Police Service "screwed up big time" in the investigation. He claimed that this comment related to the Silmser statement leaving the police department and being given to the Children's Aid Society. Chief Shaver also asserted that the comment about disciplining Constable Heidi Sebalj was in reference to the release of the information, not to the Silmser investigation. The Chief testified that it was not his "style" to inform an outside agency that he intended to discipline his officer. He acknowledged, however, that he may have told Mr. Abell the investigation had been "put on the back burner." Mr. Abell's notes of October 1, 1993, also state:

40. He is referring to Constable Heidi Sebalj.

Luc Brunet did not supervise adequately—she is inexperienced & needed close supervision. He doesn't have a file (no record on OM? [OMPPAC])—the police computer filing/record system. The file is being put together now ...

It seems from this notation that Chief Shaver was conveying to Mr. Abell that Constable Sebalj was inexperienced and that she did not receive adequate supervision from Staff Sergeant Brunet. I do not find the former police chief's denial convincing. Having heard the evidence of Chief Shaver and Mr. Abell and having reviewed Mr. Abell's copious notes, it is my view that Chief Shaver was acknowledging to the CAS executive director that his police service had "screwed up big time" in the investigation of the Silmsers complaint of sexual abuse.

Chief Shaver claimed that at the time of this meeting with the CAS, he was not aware that the Silmsers file had not been recorded on OMPPAC, as required. He testified that it was only when he returned to the police station and spoke to Staff Sergeant Brunet that he learned that information on the Silmsers investigation was not on OMPPAC.

Chief Shaver told Mr. Abell that he planned to review the Silmsers file with Deputy Chief St. Denis and Staff Sergeant Brunet and to "make some decisions." Chief Shaver also told Mr. Abell that he "planned to go over [the] Bishop's head" to contact senior Church officials and show them the Silmsers statement.

Chief Shaver told Mr. Abell that David Silmsers was of "questionable character & motive." The CAS executive director explained that if Mr. Silmsers was difficult and had problems as an adult, it conformed to the profile of a victim of abuse. The Chief also said that he "feels his force was used by Silmsers to get \$." Chief Shaver made this comment despite the fact that he knew that Mr. Silmsers, when he made the disclosure of historical sexual abuse, had stated that he had simply been seeking an apology from the Church.

Mr. Abell made it clear to the Chief of Police that he considered the Silmsers statement to be very credible; it "can't be dismissed." Mr. Abell was "seized with the information" and planned to proceed with an investigation. The Chief questioned whether the CAS could use the Silmsers statement that had been given to the agency by Constable Dunlop. As Mr. Abell wrote, "He questioned my ability to proceed on basis of 'out of channel information.'" Mr. Abell replied that there was a current risk of abuse of children as a result of the Silmsers allegations. Mr. Abell believed this matter fell within the provisions of the *Child and Family Services Act* and that the CAS had authority to investigate the matter. There was also a discussion about a possible investigation of Mr. Seguin and the need to alert his employer, the Ministry of Correctional Services.

Chief Shaver was distressed that Constable Dunlop had given the Silmsers statement to the Children's Aid Society. Perry Dunlop had not been assigned this investigation, nor was he involved in the Silmsers file. In the Chief's view, although Constable Dunlop was concerned about the protection of children, he had no authority to give this information to Richard Abell.

On that afternoon, which was a Friday, Chief Shaver met with Deputy Chief St. Denis and Staff Sergeant Brunet to discuss his concerns about the Silmsers file. The Chief made it clear that he wanted the notes and reports on OMPPAC immediately, and moreover, that the documents pertaining to the investigation were to be placed in a project file by the following Monday morning. As Staff Sergeant Brunet acknowledged, the file had been open for nine months, yet nothing had been inserted on OMPPAC. Staff Sergeant Brunet agreed with the decision to create a project file as there had been a "leak" of information to third parties and it was important to protect the identity of people who had been interviewed. The Chief of Police cancelled Constable Sebalj's leave, which had been scheduled for this period, as he wanted her to work on the Silmsers file. Chief Shaver also instructed Staff Sergeant Brunet to obtain written correspondence from lawyer Sean Adams about Mr. Silmsers's intentions regarding the other alleged perpetrator of sexual abuse, probation officer Ken Seguin. Chief Shaver testified that he did not know at that time that Sean Adams' retainer was restricted to providing independent legal advice to David Silmsers regarding the civil settlement by the Church.

Another matter discussed by Chief Shaver at the meeting was his intention to visit a senior official in the Roman Catholic Church, the Pope's representative in Ottawa. Staff Sergeant Brunet had previously discussed with Deputy Chief St. Denis Constable Dunlop's suggestion that the Cornwall police meet with the Church, which Staff Sergeant Brunet endorsed. As he said, "[W]e were not pursuing the criminal investigation at this point or it didn't appear that Heidi [Sebalj] was meeting with Mr. Silmsers at this time ... [W]e appeared to have some pretty serious roadblocks into our criminal investigation." Chief Shaver believed the conduct of the Diocese in this matter had greatly hindered the criminal investigation. He planned to visit the Papal Nuncio in Ottawa, the Bishop's "boss," to register his complaint. He did not intend to discuss the Silmsers case with Bishop Eugène LaRocque, who in the past had not been cooperative in the Deslauriers investigation.⁴¹ Moreover, Chief Shaver was disturbed that the Bishop had agreed to the civil settlement:

41. This is discussed in the chapter on the institutional response of the Diocese of Alexandria-Cornwall.

I wanted to go past the Bishop to whoever the Bishop's boss was ... I wanted to register my displeasure in the fact that this had happened ... I felt this was like the Deslauriers investigation, that somewhere along the line the Church was hindering us from doing our job. I wanted that registered at the highest level I could possibly register it at.
(Emphasis added)

Staff Sergeant Brunet confirmed that the purpose of the meeting with the Pope's representative was "to voice our concern about the approach that the Diocese had taken with this sexual assault complaint." As Staff Sergeant Brunet explained, the Cornwall Police Service decided to meet with the Archbishop in Ottawa rather than with Bishop LaRocque because the Chief and other officers thought that in the Father Deslauriers investigation in 1986, the Bishop had been "less than helpful."

A further matter raised by Chief Shaver at the meeting was the need for an investigation of Constable Perry Dunlop's conduct in the Silmser matter. Chief Shaver decided to assign Staff Sergeant Derochie responsibility for this internal investigation.

It is noteworthy that at this October 1, 1993, meeting, no discussion took place between the Chief, Deputy Chief, or Staff Sergeant Brunet regarding the importance of contacting Mr. Seguin's employer, the Ministry of Correctional Services. Staff Sergeant Brunet testified that if an investigation of Mr. Seguin had been initiated by the CPS after Mr. Silmser's complaint of sexual abuse, the Ministry of Correctional Services was likely to have been contacted, as the investigating officer would have required documents and information. The Ministry would then have become aware of the allegations against their employee, Mr. Seguin. Neither Staff Sergeant Brunet nor other officers contacted the Cornwall Probation Office or other officials at the Ministry of Correctional Services after the Silmser disclosure to the police in late 1992, nor nine months later in September 1993 when Constable Dunlop gave the Silmser statement to the Children's Aid Society. Moreover, there was no contact by the CPS with the Cornwall Probation Office or other Ministry of Correctional Services officials prior to late November 1993, when Mr. Seguin committed suicide.

It was clear from the testimony of Staff Sergeant Brunet and other CPS officers that members of the police force continue to remain uncertain of the circumstances under which they are required to report allegations of sexual abuse to employers of suspects and people under investigation by the police. Staff Sergeant Brunet stressed the need for guidance on this important issue. As he said at

the hearings, “I would really appreciate some direction for the police officers to come.”

It was at the October 1, 1993, meeting that Staff Sergeant Brunet learned that the Silmser statement had been disclosed to the CAS. It is essential to understand that Constable Sebalj did not communicate with the Children’s Aid Society during her investigation of the Silmser file to alert the agency that children may be at risk of sexual abuse. Nor did Staff Sergeant Brunet discuss with Constable Sebalj the need to contact the CAS about the allegations concerning either Father Charles MacDonald or Ken Seguin. It was only after the Silmser statement had been provided to the CAS that Staff Sergeant Brunet and other members of the CPS began to question whether a duty to report to the CAS existed for historical sexual abuse cases.

Anthony Repa became Chief of the Cornwall Police Service on August 1, 1995, and remained in this position for eight and a half years until 2003. Although Chief Repa did not have any experience with historical sexual assault cases such as the Silmser file, he testified that if an adult alleged that he or she had been sexually abused as a child, he would notify the Children’s Aid Society if the alleged perpetrator was still alive because “he is out there still and there are still children out there, the CAS should at least know.” When he became the Chief of Police, no CPS protocol existed that addressed reporting to the Children’s Aid Society in such circumstances.

Chief Repa made it clear to officers in his police force, including Staff Sergeant Brunet, who was head of the CIB, that the CAS was to be notified in all cases in which an alleged perpetrator was alive and therefore had access to children. Chief Repa had a discussion with Staff Sergeant Brunet about this issue in the Silmser case. In Chief Repa’s view, the CAS should have this information on historical sexual assault cases to determine what actions, if any, the agency would take. As he said in his evidence:

... [W]hen I was there I made it very clear I wanted everything sent to the CAS, let them sort it out; very simple.

...

... [I]f the person that is alleged to have done this 40 years ago is still alive then he—well he or she—he is out there still and there are still children out there, the CAS should at least know.

...

I mean it’s a simple phone call; let them decide.

...

... They have a copy of it and even if they don't act on it three years from now something might come up and they'll join it together. It's like our ViCLAS system or our linkage system, how can you not have enough information on sexual abuse; you can never go overboard on it.

In 1995, two years later, Chief Repa asked Staff Sergeant Brunet to prepare a memo on his understanding at the time of the Silmsers disclosures of the duty to report allegations of sexual abuse to the Children's Aid Society. It is clear that Staff Sergeant Brunet had an erroneous understanding of the statutory duty to report allegations of child abuse to the child protection agency. He mistakenly thought that only intra-familial cases were required to be reported. It was also the understanding of Staff Sergeant Brunet and other CPS officers that if an historical child abuse case was reported to the police by a complainant who was now an adult, it was not necessary to report the allegation to the CAS. Staff Sergeant Brunet and other Cornwall police officers did not think about the risk of continued sexual abuse by the same perpetrator to other children in the community:

... [M]y interpretation of an historical—if we were dealing with an adult, I didn't believe there was a duty to report. If an adult made a complaint about something that involved an abuse case, 10, 15, 20 years ago, I didn't think that there was a necessity to call the Children's Aid ... I was thinking of the victim. Is he at risk and like that's—like that was my interpretation at the time. (Emphasis added)

In his memo to Chief Repa in 1995, Staff Sergeant Brunet wrote, "It was my belief, at the time, that being the case was historical and there were no grounds to believe any recent incident had occurred, that the Children's Aid Society would not have interest in this case." Staff Sergeant Derochie also testified that when he was reviewing the Silmsers matter in October 1993, he did not think there was a duty to report historical sexual abuse cases.

On the afternoon of October 1, 1993, Staff Sergeant Brunet contacted Sean Adams, Mr. Silmsers lawyer, to ask whether his client wished to proceed criminally against Mr. Seguin. The CPS received a response one month later. In early November, Mr. Silmsers spoke directly with Constable Sebalj and told her that he did not want to pursue the allegations of abuse by the Cornwall probation officer. Inscribed in the supplementary occurrence report dated November 4, 1993, Constable Sebalj wrote: "Silmsers once again reiterated ... that he did not want to talk to anyone about this ... Silmsers suggested that if other victims come forward that he would gladly assist—as a witness." At this point, Staff Sergeant Brunet considered the Seguin file closed; it had become clear that Mr. Silmsers did not

want to pursue the allegations of abuse by his former probation officer. The Staff Sergeant did not ask for a copy of the settlement documents and therefore did not know that Mr. Silmser may have been refusing to participate in a CPS investigation because he believed that if he did, he would lose his settlement money from the Diocese of Alexandria-Cornwall.

Constable Sebalj spent the weekend organizing her documents and preparing the OMPPAC report pursuant to the instructions of Chief Shaver. She brought the Silmser file to Staff Sergeant Brunet's house on Sunday afternoon for him to review. Chief Shaver was given the documents by Staff Sergeant Brunet as requested on Monday, October 4, 1993. The Chief asked for additional material. He wanted a synopsis of the information of each person interviewed by Constable Sebalj, as well as other individuals who had been contacted but had claimed they had no knowledge of the substance of the Silmser allegations. Chief Shaver wanted to know whether this case "did slip through the cracks" and "how did we get to this stage where we don't have it on OMPPAC" and "where we were with this file?" The Chief wanted to carefully review the Silmser file to make a decision as to what direction the Cornwall Police Service should take with regard to this matter. His evidence was somewhat inconsistent because after his meeting with the Crown, Chief Shaver was of the view that there was nothing he could do to reinvestigate this matter.

Sergeant Lortie testified that he was instructed by Staff Sergeant Brunet to create a project file for the Silmser case, which he did in early October 1993. Chief Shaver, Staff Sergeant Brunet, and Constable Sebalj were given access to the file. Sergeant Lortie did not agree with the decision to place the Silmser case in a project file. He thought that officers at the CPS and other police forces should be able to search OMPPAC and find Father MacDonald's name in the event that there were allegations by other victims of sexual abuse by the priest.

Chief Shaver and Staff Sergeant Luc Brunet Meet With the Papal Nuncio and the Bishop of the Diocese of Alexandria-Cornwall

On October 7, 1993, Chief Shaver and Staff Sergeant Brunet travelled to Ottawa to meet with the Papal Nuncio, the Pope's representative in Canada, Archbishop Carlo Curis. The purpose of the meeting, as mentioned, was to raise concerns about the civil settlement entered into by the Diocese of Alexandria-Cornwall with Mr. Silmser during the Cornwall police criminal investigation. The CPS officers thought that the criminal investigation had been constrained by the actions of the Diocese. They wanted to convey to the Papal Nuncio that the civil settlement was not in the public interest and that it did not address concerns for the safety of young people in the Cornwall community. The Father Charles

MacDonald criminal investigation had been terminated by the police, and the CPS wanted to make it clear to Church officials that the settlement “tied” the hands of the police. Staff Sergeant Brunet explained:

The objective of the trip was to voice our concern about the settlement while there’s a criminal investigation going on ... (a) we felt that it really tied us up; (b) we felt that it was not a right way to deal with issues ... and it compromised community safety.

At the meeting with Archbishop Curis, Chief Shaver gave an overview of the Silmsers case. He also told the Papal Nuncio that two other individuals had disclosed to the police that they also had been sexually molested by Father Charles MacDonald. The Papal Nuncio recommended that the Chief meet with Bishop LaRocque. Chief Shaver replied that he had reservations about discussing this matter with the Bishop because of his past conduct on similar matters. Chief Shaver stressed that the Church’s conduct in the Silmsers matter had “tied our hands,” he “didn’t believe it was right,” and there was a “need to protect the children in the community.” Archbishop Curis reassured Chief Shaver that he would exercise his authority if the Bishop was not cooperative.

Chief Shaver contacted Bishop LaRocque’s office and both he and Staff Sergeant Brunet met with the Bishop that day. The Bishop, who was already conversant with the allegations against Father Charles MacDonald, assured Chief Shaver and Staff Sergeant Brunet that he would cooperate with the CPS. Bishop LaRocque said that Monsignor McDougald was responsible for matters of this kind in the Diocese. He said that Monsignor McDougald had confronted Father Charles MacDonald with the Silmsers allegations; the priest had denied them, and both Bishop LaRocque and Monsignor McDougald believed Father MacDonald.

Chief Shaver testified that Bishop LaRocque confirmed that David Silmsers had originally sought an apology from the Diocese. He also testified that Bishop LaRocque explained there had been a subsequent \$32,000 settlement; \$10,000 was paid by the Diocese and \$10,000 by Father Charles MacDonald, but the Bishop did not disclose the source of the remaining \$12,000 payment. The Chief of Police asked the Bishop to explain why the Diocese had given money to Mr. Silmsers if Church officials in fact believed that Father MacDonald was innocent of the allegations. The Bishop simply replied that Mr. Silmsers needed money for counselling. Chief Shaver discussed the impropriety of the monetary settlement.

Bishop LaRocque stated that Jacques Leduc was the lawyer representing the Diocese in the Silmsers matter. Chief Shaver testified that he may have known

at the time of this meeting that Malcolm MacDonald was counsel for Father Charles MacDonald. Bishop LaRocque explained that the lawyers had advised the Bishop to enter into the settlement with Mr. Silmsner. The Bishop stated that Father MacDonald had paid the money because he did not want his reputation soiled in the community. At this point, the Chief responded, “[T]his is going to come back and bite us both right in the butt.”

Chief Shaver did not ask the Bishop to identify the source of the \$12,000 payment. At the time, it did not seem important. It “never dawned” on Chief Shaver that Ken Seguin could be involved in the settlement with Mr. Silmsner. The Chief’s primary concern was that the Diocese had tied his hands by entering into the monetary settlement.

Chief Shaver did not ask Bishop LaRocque whether there were confidentiality provisions in the settlement, nor did he ask the Bishop for a copy of the settlement documents. Claude Shaver believed the settlement was responsible for the termination of the criminal investigation. He agreed that in retrospect, the CPS should have examined the settlement documents prepared by the Diocese and signed by David Silmsner. When asked by Commission counsel whether it had dawned on Chief Shaver that the monetary settlement could be illegal, he replied “I had not thought about it at the time.” Staff Sergeant Derochie testified that if the purpose of the settlement was a payment of money to Mr. Silmsner to either avoid or terminate a criminal investigation, this would raise serious concerns for him. The Staff Sergeant testified that he would have wanted to confer with someone to determine the propriety of the settlement.

When Bishop LaRocque learned there were two other possible victims, he became visibly upset. Staff Sergeant Brunet told the Bishop, without revealing names, that two people (C-3 and C-56) had disclosed that they also had been sexually molested by Father MacDonald when they were teenagers. Bishop LaRocque told the CPS officials that he had been concerned when he was initially approached with the prospect of a civil settlement with Mr. Silmsner. He said that he had been led to believe by the lawyers involved in the negotiations that the police had not found other evidence to corroborate the allegations of abuse by David Silmsner. Bishop LaRocque said he would meet with Father MacDonald that evening.

At the conclusion of the meeting with the Bishop, Chief Shaver discussed the need for the Diocese to develop a protocol on sexual abuse. Bishop LaRocque had recently returned from a conference on sexual abuse. The development of a protocol on clergy abuse is discussed in Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall.

Bishop LaRocque called Chief Shaver later that evening. He said he felt betrayed. According to Claude Shaver, Bishop LaRocque said that Father Charles

MacDonald had admitted the assault, but then abruptly said it wasn't an assault but rather an isolated homosexual relationship. The Bishop told Chief Shaver that Father MacDonald would be removed from the parish and sent to a treatment centre for priests for an assessment. The Bishop apologized to the Cornwall Chief of Police. Inscribed in Chief Shaver's notes of the call is: "Charlie admits—will go treatment special place—study 1 week—would rec.—leaves Saturday—no further contact—Bishop sorry."

Chief Shaver testified that it was his understanding of this conversation with the Bishop that Father MacDonald had not admitted to sexually assaulting David Silmser. Had that been the case, he said, the CPS would have reopened the investigation against the priest. The isolated homosexual incident discussed by the Bishop in the telephone call was unrelated to the allegations of sexual abuse by David Silmser, said Claude Shaver at the hearings. Staff Sergeant Brunet testified that Chief Shaver discussed the telephone call he had received from the Bishop the previous evening and relayed that Father MacDonald had admitted he was a homosexual and that he would be undergoing treatment. Chief Shaver subsequently retained a lawyer, Colin McKinnon, to represent him in a lawsuit initiated by Mr. Silmser. In a statement prepared in early 1994 by the Chief for his lawyer, entitled "D.S. Alleged Sexual Assault," Claude Shaver wrote: "The Bishop contacted me later and advised that the Priest had admitted the assault and that it was an isolated incident and he was prepared to leave for the treatement [sic] / assessment Center immediately." There are clearly inconsistencies between Chief Shaver's written notes from 1993 and 1994, what he told Staff Sergeant Brunet and OPP Detective Inspector Smith, and what he said in his testimony at the Inquiry as to whether Father Charles MacDonald had admitted to Bishop LaRocque that he had sexually assaulted David Silmser.

It was apparent to Deputy Chief St. Denis on October 7, 1993, that Chief Shaver was "by-passing the chain of command" and that the Deputy Chief was not being included in discussions about the Silmser matter with the Criminal Investigation Bureau and Youth Bureau. As Deputy Chief St. Denis wrote:

... [M]y diary book has an entry on October 7, 1993, indicating the Chief and Staff Sergeant Brunet were going to Ottawa re; Silmser file.

At this point, it was obvious to me that Chief Shaver was by-passing the chain-of-command, as I had little or no input or was not involved in most discussions between the Chief's Office and CIB/Youth Bureau.

There was clearly tension and a poor working relationship between Chief Shaver and Deputy Chief St. Denis. This is discussed in further detail in this chapter.

The day after the meeting with the Papal Nuncio and Bishop LaRocque, Chief Shaver and Staff Sergeant Brunet met with the executive director of the CAS, Richard Abell, and Angelo Towndale. Angelo Towndale was on the Cornwall Police Services Board in 1993, and Staff Sergeant Brunet was on the Board of the Children's Aid Society. Chief Shaver discussed his meetings with the Papal Nuncio and Bishop LaRocque. Inscribed in Mr. Abell's notes of the October 8, 1993, meeting is the following:

Bishop says he is against the payoff but took the advice of his lawyers,
(Leduc, Malcolm MacDonald).

Acknowledged he had a mess on his hands—the decision to pay off will
come back to “haunt him.”

Chief/Luc tell him we are informed—to expect to hear from us.

Some discussion on need for a protocol to handle these matters.

Richard Abell said he planned to meet with Bishop LaRocque and, in addition, would inform the Ministry of Correctional Services about the allegations against Mr. Ken Seguin. It does not appear that the CAS contacted the Ministry of Correctional Services.

In October 1993, Chief Shaver did not instruct any of his officers to obtain the settlement papers between the Diocese and David Silmser. The CPS Chief clearly understood that a criminal prosecution could be pursued even if there had been a civil settlement. The Chief also did not ask the Bishop for a list of altar boys to assess whether other young people had been sexually molested by Father MacDonald. Chief Shaver did not pursue the investigation against the priest or Ken Seguin. As will be discussed, it was during this time that the Cornwall Police Services Board were negotiating an early retirement package with Chief Shaver.⁴²

The Derochie Investigation

Deputy Chief St. Denis sent a confidential note to Staff Sergeant Derochie on October 7, 1993, requesting him to conduct an internal investigation of Constable

42. As I discuss in this chapter, Chief Shaver entered discussions and negotiations with Mayor Martelle regarding his retirement from the Cornwall Police Service and severance package in about February or March 1993. Members of the Cornwall Police Services Board were not aware of these discussions at that time.

Perry Dunlop's behaviour in the Silmsers matter. Staff Sergeant Derochie, until this time, had no knowledge of the allegations made by the complainant, David Silmsers.

Staff Sergeant Derochie met with Staff Sergeant Brunet on October 12, 1993. Staff Sergeant Brunet explained that Constable Dunlop, who had no involvement in the Silmsers file, had approached Constable Sebalj and asked to read Mr. Silmsers's statement. Constable Sebalj willingly gave the statement to her colleague Perry Dunlop, who in turn shared the information with his wife, Helen. Ms Dunlop subsequently made contact with Mr. Silmsers, the complainant, and questioned him on the reasons he had decided to withdraw his complaint against Father MacDonald. As Staff Sergeant Derochie stressed in his testimony, it was "totally improper" for a police officer's spouse to contact an alleged victim. Staff Sergeant Brunet told Staff Sergeant Derochie that Perry Dunlop had provided a copy of the Silmsers statement to the Children's Aid Society, which Staff Sergeant Derochie also thought was inappropriate.

Staff Sergeant Derochie met with Constable Sebalj that day, and she confirmed the information conveyed by Staff Sergeant Brunet. Not surprisingly, Constable Sebalj felt betrayed by Constable Dunlop's actions; she had given the Silmsers statement to Constable Dunlop for what she believed was an innocent purpose and he had shared the information with his wife and an outside agency. Constable Sebalj was visibly shaken by these events and was concerned that she had disclosed the confidential statement to Constable Dunlop.

Staff Sergeant Derochie also met with Constable Dunlop on October 12, 1993, to explain that he had been asked to conduct an investigation, pursuant to the *Police Services Act*, of Constable Dunlop's behaviour in the Silmsers matter. Perry Dunlop became extremely upset.

After reading the relevant documents on the Silmsers investigation and meeting with these officers, Staff Sergeant Derochie began to realize that "there were far larger issues at stake here than that involving Cst. Dunlop." In his notes of October 12, 1993, Garry Derochie wrote, "I was beginning to form the opinion that although wrong Dunlop might be able to justify his actions, i.e. the case had been mishandled, and he was acting in good faith ... for the good of the community."

Staff Sergeant Derochie met with the executive director of the CAS a few days later. At the October 14, 1993, meeting, Mr. Abell made it clear that he was a friend of Constable Dunlop. Mr. Abell had been at a gathering at a local restaurant to listen to music played by Perry Dunlop, whom he considered a gifted musician. Mr. Abell explained that it was in the parking lot of Quinn's Inn in St. Andrews that Perry had approached him with the dilemma with which he was struggling regarding the Silmsers matter. Mr. Abell explained that he

subsequently went to the Dunlop home to read the Silmser statement. He had asked for a copy of the statement, which Perry Dunlop provided to him. Perry Dunlop, he said, felt so strongly about the principles involved in this matter that the CPS Constable was prepared to place his job at risk.

Mr. Abell informed Staff Sergeant Derochie that the CAS was initiating a formal investigation into the Silmser allegations of sexual abuse. His agency intended to investigate the allegations involving Father Charles MacDonald and he planned to contact the Ministry of Correctional Services regarding the allegations involving probation officer Ken Seguin.

It was clear to Staff Sergeant Derochie that the CAS executive director had serious concerns about the CPS investigation of the Silmser case. Mr. Abell stressed that the Children's Aid Society is responsible for the protection of children and that his agency should have been involved at an earlier time in the Silmser matter. This "caught" Staff Sergeant Derochie "off-guard." The CPS officer did not think the CAS had the mandate to investigate allegations of historical sexual assault. He, like some of his colleagues on the Cornwall police force, also thought the CAS mandate was restricted to intra-familial and not extra-familial cases of sexual abuse:

... [I]t was my understanding that a CAS mandate would—we'd have to identify a child at risk now in the community as opposed to a child that would have been at risk 20 years ago, you know, as an historical thing. Was there evidence—was there evidence that a—as a—of a child being at risk in the community; our understanding was they weren't—they weren't mandate to investigation sexual—or historical sexual—or allegations of historical sexual assault.

...

[M]y understanding was it was familial situations as opposed to outside of the family unit, as it were, situation and I—I didn't pursue that because it—it—it caused me to pause and think of my understanding of the whole duty to report with CAS may be wrong and I wanted, you know, I wasn't going to argue openly with him there or discuss openly because I didn't know. He caused me enough confusion that I wanted to go back and evaluate my understanding of our duty to report.

It is clear that the Chief of the Cornwall Police Service and his officers did not clearly understand their duty to report suspected child sexual abuse under the statutory provisions in the *Child and Family Services Act*. They had the mistaken view that the duty to report to the CAS did not extend to extra-familial cases, that

is, to cases in which the alleged perpetrator was not a family member. Also, contrary to the view of Mr. Abell, members of the Cornwall Police Service did not believe they had a duty to report abuse of historical cases, even if children were currently at risk of abuse by the perpetrator. Mr. Abell mentioned to Staff Sergeant Derochie that in his meeting with Claude Shaver, the Chief had acknowledged that the Cornwall Police Service had poorly managed the investigation of the Silmsers complaint. Mr. Abell also discussed the declared conflict of interest by the local Crown, Murray MacDonald, who had nevertheless provided advice to Constable Sebalj on the Silmsers file as to whether criminal charges should be laid.

After the meeting with Mr. Abell, Staff Sergeant Derochie returned to the office to consult with his superiors, Chief Shaver and Deputy Chief St. Denis. Staff Sergeant Derochie had “serious concerns” and “saw the apparent mismanagement of the investigation overshadowing Dunlop’s involvement.” He was prepared to conclude at that point that charges under the *Police Services Act* should not be laid against Constable Dunlop. As Staff Sergeant Derochie testified, “I was willing to give Perry Dunlop the benefit of the doubt very early in the game that he was acting in good faith in making this disclosure to the CAS.”

Chief Shaver and Deputy Chief St. Denis “acknowledged that the case had fallen between the cracks and that there may have been some mismanagement.” They were concerned about the length of the investigation—the file had been inactive for many months—and the circumstances under which the investigation of the Silmsers complaint had been terminated. Nevertheless, Chief Shaver made it clear that he wanted Staff Sergeant Derochie to focus on his mandate, which was Constable Dunlop’s disclosure of the contents of the Silmsers file to his wife, Helen, and his provision of a copy of the Silmsers statement to the Children’s Aid Society. Chief Shaver indicated that he planned to initiate a second investigation into the management of the criminal investigation by officers at the Cornwall Police Service.

Helen Dunlop Arrives at Chief Shaver’s Home, Registers Complaint About the Treatment of Her Husband by the CPS

On the evening of October 14, 1993, Helen Dunlop arrived at Chief Shaver’s home and knocked on his front door. Ms Dunlop had not informed her husband that she planned to visit the Chief at his home. When he came to the door, Ms Dunlop asked Claude Shaver if he recognized her. The Chief replied that he had been at her wedding and identified her as Perry Dunlop’s wife. The Chief invited Ms Dunlop into his living room and asked her if she would like to sit down.

Ms Dunlop was very upset. She was clearly concerned about her husband’s job. As she said at the hearings:

... I was trying to defend my husband; trying to protect him; because I felt what was happening to him was unfair and that he had little to no support from his colleagues and I wanted to know for myself and hear from Mr. Shaver himself what was going on.

Ms Dunlop questioned the Chief about why Perry was being subjected to an investigation as he had done something honourable—he had reported allegations of child abuse to the Children’s Aid Society. According to the evidence of Helen Dunlop, the Chief became agitated and banged his fist on the coffee table. He yelled at her to leave his home, to which she responded, “I know you intimidate a lot of guys at the police station, but you don’t intimidate me and I’m not going to let you do this to my husband.” She said that the Chief showed her to the door, slammed it, and turned off the lights. Claude Shaver denied that he yelled at Ms Dunlop or that he banged his fist on the coffee table.

Chief Shaver did not understand why Ms Dunlop thought her husband’s job was in jeopardy. As mentioned, the Chief had had a meeting earlier that day with Deputy Chief St. Denis and Staff Sergeant Derochie at which it had been agreed that the *Police Services Act* charges against Constable Dunlop “did not appear called for” and that the primary concern was problems with the criminal investigation of the Silmsers’ allegations, not Constable Dunlop’s behaviour.

Chief Shaver contacted Staff Sergeant Derochie at his home that evening after Ms Dunlop had left. He met with the Staff Sergeant and Deputy Chief St. Denis the following day. According to Staff Sergeant Derochie, the Chief was “still shaken from Ms Dunlop’s visit of the night before.” The Chief explained that Perry Dunlop’s wife Helen had arrived at his home, unannounced. He said that she had been very aggressive and had accused the Chief of placing Perry Dunlop’s job at risk. Chief Shaver was perplexed at Ms Dunlop’s reaction as he thought that the force’s approach had been reasonable and “rather mild.” Staff Sergeant Derochie told the Chief he had assured Constable Dunlop that the consequences for providing the CAS with the Silmsers’ statement and discussing it with his wife, Helen, would not be serious. Staff Sergeant Derochie had also conveyed this information to Constable Dan O’Reilly, who in turn asked Constable Quinn to provide this reassurance to Perry Dunlop.

Chief Shaver made it clear that Constable Dunlop was merely to be counselled “for going outside of channels,” that is, informally disciplined. In fact, the Chief of Police had drafted a document to that effect on the evening of October 14, 1993. He told Staff Sergeant Derochie to counsel Constable Dunlop as soon as possible. As Staff Sergeant Derochie explained at the Inquiry, counselling is a very low level of discipline. A notation is placed in the officer’s personnel file to the effect that the matter at issue was discussed and that the officer was counselled.

At the October 15 meeting, Staff Sergeant Derochie was instructed to provide a factual overview of the Silmser investigation—to furnish a chronology of events from the time Mr. Silmser made the complaint to the CPS in December 1992. In other words, Staff Sergeant Derochie's mandate had been expanded from a review of Constable Dunlop's conduct to a review of the Silmser investigation by officers at the Cornwall Police Service.

Constable Dunlop Is Not "Counselled" for His Transgression

Staff Sergeant Derochie decided to discuss Constable Dunlop's involvement in the Silmser matter with Staff Sergeant D'Arcy Dupuis. The meeting took place on October 15, 1993, in the early afternoon at the home of Staff Sergeant Dupuis. Constable Dunlop had shared his concerns and anxiety with Staff Sergeant Dupuis after meeting with Staff Sergeant Derochie on October 12, 1993. Perry Dunlop, Staff Sergeant Derochie learned, had been "distraught" and "in tears over this issue."

In accordance with Chief Shaver's instructions on October 15, 1993, to counsel Constable Dunlop as soon as possible, it was Staff Sergeant Derochie's intention to carry out the Chief's orders that day. But unfortunately, Constable Dunlop went on sick leave on October 15 and did not arrive at work for his shift. As Staff Sergeant Derochie wrote in his notes, "On reporting for duty on the night shift, I was informed, through the grapevine, that Dunlop was off on sick leave and would be off until this investigation was completed." It was apparent to Garry Derochie that Constable Dunlop was evading criticism of his conduct in the Silmser matter. In his notes, Staff Sergeant Derochie added, "Cst. Dunlop was not prepared to take any criticism for his actions in this incident. He sees himself as a white knight fighting the good fight."

In Staff Sergeant Derochie's view, Cornwall police management was not "being heavy-handed" in the consequences it was imposing on Constable Dunlop for (1) giving the Silmser statement to the CAS, and (2) disclosing the confidential contents of Mr. Silmser's allegations to his wife. But the counselling session with Constable Dunlop never took place. Staff Sergeant Derochie stated that when Constable Dunlop returned to work, there was not an appropriate time to counsel him. The Staff Sergeant testified that he attempted through Constable Quinn to encourage Perry Dunlop to meet with him to resolve the matter but was told that Constable Dunlop would not make himself available for counselling.

In discussions with Richard Abell on November 4, 1993, Staff Sergeant Derochie learned that Bill Carriere at the CAS was responsible for the investigation of the Silmser file at the agency. The CAS had met with Mr. Silmser the previous week, and officials at the agency believed that he fit the profile of a victim of multiple abuse over a several years. Mr. Abell commented to Staff Sergeant

Derochie that in situations in which the Church is involved with allegations of sexual abuse, there are occasionally “cover-ups.” The CAS executive director thought that perhaps Mr. Silmsers had been paid money by the Church “to keep things quiet.” Inscribed in Staff Sergeant Derochie’s notes of the November 4, 1993, meeting is:

As in the case when members of the Church are involved, cover ups are sometime [sic] involved. He believed that this might be the case in this incident. Silmsers had been paid off to keeps [sic] things quiet.

At this meeting, both Staff Sergeant Derochie and Mr. Abell “agreed that it was important that the suspects in this case (Father MacDonald and Mr. Seguin) be identified to the community and that they answer for their actions.”

After this meeting with the CAS, Staff Sergeant Derochie returned to the station to meet with Staff Sergeant Brunet and Constable Sebalj. Constable Sebalj reported that Mr. Silmsers had called her and was very upset. He wanted to know how the CAS knew about the allegations of sexual abuse that he had disclosed to the Cornwall police. Mr. Silmsers also told Constable Sebalj that a “crazy woman” had been phoning him and had travelled to Bourget to his home. Mr. Silmsers provided Constable Sebalj with a piece of paper that contained a telephone number and the name, “Helen.” Mr. Silmsers did not know that Helen Dunlop was the spouse of a CPS officer.

It was in November 1993 that Staff Sergeant Derochie began his expanded mandate, namely an examination of how the CPS investigated the Silmsers complaint.

In discussions with Staff Sergeant Brunet and Constable Sebalj on November 4, 1993, Staff Sergeant Derochie learned that David Silmsers had made a decision during the police investigation not to pursue the complaint against Ken Seguin. These officers told Staff Sergeant Derochie that Mr. Silmsers had been in contact with Mr. Seguin and had assured his former probation officer that the criminal allegations against him were not proceeding at that time. Staff Sergeant Derochie understood that a payment of \$32,000 had been offered to Mr. Silmsers from three sources: the Church, Father MacDonald, and an unknown source. The Staff Sergeant thought that perhaps this “mystery money” was from Mr. Ken Seguin. His notes of November 4, 1993, state:

This may explain where the mystery money came from. (Silmsers’s cash settlement included a portion from the Church, a portion from Fr. MacDonald and a third portion (\$10,000.00 or \$12,000.00) from an unknown source.

Staff Sergeant Derochie understood that Malcolm MacDonald was acting on behalf of both Father Charles MacDonald and Ken Seguin. He thought that either Mr. Seguin or Malcolm MacDonald, on behalf of Mr. Seguin, had provided the “mystery money” to David Silmser. Staff Sergeant Derochie did not do any follow-up regarding this cash offer to Mr. Silmser; nor, to his knowledge, did any of his fellow officers at the Cornwall Police Service.

Staff Sergeant Derochie testified that in hindsight, he thought that before the matter became public in January 1994, the CPS should have asked for the settlement documents in order to assess whether Mr. Silmser’s decision not to proceed with the criminal investigation was voluntary.

Staff Sergeant Derochie also learned on November 4, 1993, that Father MacDonald’s lawyer, Malcolm MacDonald, was “rumoured to have a sexual preference for little boys.” He was told that Malcolm MacDonald, Father MacDonald, and Ken Seguin were “close friends” who moved “within the same circles.” Staff Sergeant Derochie did not follow up on the connection between these three men. CPS officers should have realized that Malcolm MacDonald may have had a motive to ensure that a financial settlement was reached between the Diocese, Father MacDonald, and David Silmser, which had the effect of preventing Mr. Silmser from pursuing the criminal complaint. Staff Sergeant Derochie was also told at that time that the father of Crown Attorney Murray MacDonald, Milton MacDonald, had been convicted of sexually assaulting a young boy several years earlier in Lancaster.

Staff Sergeant Derochie briefed Chief Shaver and Deputy Chief St. Denis on the progress of his inquiries and of the meetings with Richard Abell, Staff Sergeant Brunet, and Constable Sebalj. They discussed Constable Dunlop’s conduct in the Silmser matter. Staff Sergeant Derochie told his superiors that “Dunlop had either exercised incredibly bad judgment or that his actions had been more calculated and sinister than originally thought.” It was Staff Sergeant Derochie’s opinion that Perry Dunlop could have resolved his concerns regarding the Silmser allegations through the chain of command.

During the course of this discussion, Staff Sergeant Derochie told the Chief and Deputy Chief that he thought criminal charges should be laid, if possible, against both Father MacDonald and Ken Seguin. He also mentioned that the CAS executive director, Richard Abell, wanted criminal charges to be pursued. As Staff Sergeant Derochie inscribed in his notes of November 4, 1993:

If there is a chance to continue and undue [sic] some of the damage which was done by not dealing (apparently at this time) with the complaint in a more timely manner ... then we would all do what we had to in order to fix this investigation.

Staff Sergeant Derochie suggested to the Chief and Deputy Chief that he meet with the Crown prosecutor from L'Original, Mr. Pelletier. But this did not take place because according to "protocol," a meeting would have to be arranged through the local Crown, Murray MacDonald. And according to Staff Sergeant Derochie, Murray MacDonald would only do so if the victim, David Silmser, was prepared to cooperate and go forward with the criminal investigation.

Despite the views of Staff Sergeant Derochie (as well as Richard Abell), the Cornwall Police Service decided not to re-investigate the Silmser matter with a view to possibly laying charges against the priest and probation officer. The CPS decided that it would simply cooperate with the Children's Aid Society in its investigation. But when the CAS the following day asked the Cornwall police for the names of the two other men who alleged that Father MacDonald had sexually assaulted them when they were young, the CPS was not willing to share this information. Greg Bell, a CAS worker assigned to the Silmser investigation, asked Staff Sergeant Derochie for the names of these two victims. Chief Shaver instructed Staff Sergeant Derochie not to disclose this information to the CAS as these two victims did not want to be identified. But the CPS did not follow up with these two men in November 1993 to determine if they would be willing to disclose their identities. Staff Sergeant Derochie acknowledged that, in retrospect, the Cornwall Police Service should have contacted these two individuals in November 1993 to assess whether they would be willing to cooperate with the investigation: "[I]n hindsight, I'm saying we should have done it." I agree. The Cornwall Police Service should have contacted these two men, who had alleged that they had also been sexually abused by Father Charles MacDonald.

Ken Seguin Found Dead

On the day before Ken Seguin's death, David Silmser contacted the Cornwall Police Service. In the November 24, 1993, call, received by Staff Sergeant Dupuis, Mr. Silmser told the officer that he was expecting to settle a civil suit involving sexual abuse within the next forty-eight hours. Mr. Silmser asked the police officer to file a report indicating that if anything happened to him, both Ken Seguin and Father MacDonald should be considered suspects. Staff Sergeant Dupuis filed a supplementary report after this telephone call from Mr. Silmser.

Staff Sergeant Brunet read the report of this call the following day. He showed it to Deputy Chief St. Denis, who instructed him to call the Chief. Claude Shaver was no longer working at the police station.⁴³ Staff Sergeant Brunet met the

43. Chief Shaver's retirement was announced in early November 1993.

Chief at his home to discuss the Silmser call of the previous day. Chief Shaver instructed Staff Sergeant Brunet to contact David Silmser to confirm that it was, in fact, he who made this call. Staff Sergeant Brunet was unable to reach Mr. Silmser that day.

That evening, November 25, 1993, Staff Sergeant Dupuis called Staff Sergeant Brunet's home to advise him that Ken Seguin had been found dead. Staff Sergeant Brunet contacted the Ontario Provincial Police (OPP) the following day and was told that Detective Constables Randy Millar and Chris McDonell were investigating the Seguin death. Staff Sergeant Brunet wanted to inform the OPP about the Silmser call the previous night and David Silmser's allegations of sexual abuse by Ken Seguin. Staff Sergeant Derochie inscribed in his notes the day after Ken Seguin's suicide: "It was obvious to all of us that Silmser's wanting more money and his threatening to expose Seguin was, most likely, the reason he took his own life."

Ken Seguin was never interviewed by the Cornwall Police Service. Nor was the probation officer investigated for the allegations by David Silmser of sexual assault. Mr. Silmser was one of many males in the Cornwall community who alleged that they were sexually assaulted by Ken Seguin, a probation officer at the Ministry of Correctional Services for over twenty-five years.

On November 26, 1993, Staff Sergeants Derochie and Brunet met with OPP Detective Constables McDonell and Millar. They offered the OPP information and documents in relation to the Silmser allegations of sexual abuse by Mr. Seguin.

In mid-December 1993, Mr. Silmser called Staff Sergeant Derochie. He criticized the Cornwall police for the lack of attention to the investigation and for the long periods in which the file had remained dormant: "ten months and nothing has been done by the Cornwall Police."

In early January 1994, Acting Chief Carl Johnston, who had succeeded Chief Shaver, asked Staff Sergeant Derochie to submit his report of the CPS investigation of Constable Dunlop. The report was submitted January 8, 1994.

That month Acting Chief Johnston decided to ask an external police force to review the Silmser investigation by the Cornwall Police Service. In particular, he wanted to determine whether an efficient investigation had been conducted and whether any officer of the Cornwall police had concealed or downplayed the Silmser allegations of sexual abuse by Father Charles MacDonald and probation officer Ken Seguin. Acting Chief Johnston contacted the Ottawa Police Service and Superintendent Brian Skinner and Staff Sergeant William (Bill) Blake arrived in Cornwall on January 10, 1994. This is discussed in fuller detail in the following section.

In March 1994, Staff Sergeant Derochie instructed Constable Quinn to counsel Perry Dunlop. As mentioned, this had been decided in the fall of 1993, when Claude Shaver was the police chief, but counselling did not take place as Constable

Dunlop went on sick leave. Staff Sergeant Derochie “wanted to get this done.” In March 1994, Perry Dunlop was still on sick leave. Constable Quinn reported to Staff Sergeant Derochie that Perry Dunlop had no intention of coming to the police station to be counselled for his behaviour in the Silmsier case. As Staff Sergeant Derochie stated, Constable Dunlop “felt strongly that he wasn’t subject to being counselled” and “didn’t want to accept any criticism ... for what he had done.”

Staff Sergeant Derochie stated that Constable Dunlop’s decision was unfortunate as counselling would have put an end to this issue. The matter would not have been pursued under the *Police Services Act*. Instead, a formal complaint was made to the Board of Inquiry for breach of confidence and discreditable conduct. The Board stayed the proceedings, ruling in Constable Dunlop’s favour. There was an appeal by the Police Complaints Commission, the matter then went before the Ontario Divisional Court and was not resolved until December 1995. The Divisional Court dismissed the appeal of the Police Complaints Commissioner on December 7, 1995. The Cornwall Police Service did not consider issuing an order to Constable Dunlop either in the fall of 1993 or in early 1994 to the effect that he was obliged to report for counselling. “In retrospect,” Staff Sergeant Derochie thought that this “may have been a wiser course of action.”

On December 12, 1995, a *Fifth Estate* episode on Perry Dunlop was broadcast on CBC television. Chief Repa was upset that a sworn police officer was discussing on television confidential issues, in violation of the police oath. As Chief Repa said, this constituted further negative publicity about the Cornwall Police Service.

Constable Dunlop initiated a lawsuit against the Cornwall Police Service in 1996. He was on long-term disability leave at the time. I discuss Constable Dunlop’s activities and interviews with alleged victims of historical sexual abuse while he was on leave from the Cornwall Police Service later in this Report.

Conclusions of Staff Sergeant Derochie on His Review of the CPS Investigation of the Silmsier Complaint

Staff Sergeant Derochie came to several conclusions in his review of the CPS investigation of the Silmsier complaint. There was clearly a lack of proper documentation in this case. No reports were added to OMPPAC during the investigation. As the Staff Sergeant said, senior officers and management “lost track” of this “high profile investigation.” His concern was that if the Chief or Deputy Chief had wanted to monitor this case, “there was only an incident created, no reports filed, no people appended to the system.” This was not “proper” practice. There was no documentation for a significant period.

Constable Sebalj's supervisors did not realize that "she was not filing reports ... [T]he Deputy Chief and the Chief, who were both aware that it was a high profile investigation, to my ... knowledge, never did make any ... inquiries about it, they just moved onto other things. It appears that this thing ... slips between the cracks."

Staff Sergeant Derochie stated that this was a problem with other sexual abuse investigations conducted by the Cornwall Police Service. His concerns about case management, supervision, record keeping, and delay in the Silmsers investigation were also problems that he noted in the Jeannette Antoine case and the Earl Landry Jr. investigation.

The complainant had clearly requested a male officer. David Silmsers did not feel comfortable discussing the details of his sexual abuse with Constable Heidi Sebalj. In Staff Sergeant Derochie's view, the investigation could have been reassigned to Sergeant Lortie, an experienced senior police officer who was male.

Staff Sergeant Derochie also thought that the allegations of abuse by Ken Seguin should have been investigated. As he said in his testimony, it greatly concerned him that the CPS did not investigate David Silmsers' allegations of sexual abuse by his former probation officer, Ken Seguin.

After his review of the Silmsers case, it was obvious to Staff Sergeant Derochie that historical sexual assault investigations at the CPS were characterized by delay and did not receive the attention given by officers to other criminal investigations.

After carefully reviewing the evidence of the police investigation of the David Silmsers complaint, it is my conclusion that the Cornwall Police Service failed to have in place and enforce existing practices and procedures that would have ensured that the investigation into the allegations of historical sexual abuse by Mr. Silmsers was conducted in a timely manner and was assigned high priority. In my view, the Cornwall Police Service unreasonably delayed the investigation and failed to ensure that there were appropriate resources for the investigation of the allegations of historical sexual abuse. It is also evident that the Cornwall Police Service failed to enforce practices and procedures that would have ensured that notes and records were properly kept and stored, and that they were retrievable. It also failed to properly supervise investigators such as Constable Heidi Sebalj during the investigation into the allegations by Mr. Silmsers of sexual abuse by Father MacDonald and Ken Seguin. The Cornwall Police Service also failed to ensure that the complainant was offered support and kept apprised of the status of the investigation. Moreover, it failed to institute proper practices and develop protocols to ensure that there was effective cooperation with other public institutions such as the Children's Aid Society.

It is also my view that Staff Sergeant Brunet failed to properly supervise Constable Heidi Sebalj during the investigation of the Silmsers' allegations of sexual abuse against Father Charles MacDonald and Ken Seguin. As supervisor, he ought to have ensured that allegations of historical sexual abuse were assigned high priority and were conducted in a timely manner. He also failed to assign an experienced male investigator to the case, as had been requested by the complainant, Mr. Silmsers. Nor did Staff Sergeant Brunet take adequate measures to ensure that an investigation was conducted into allegations against Cornwall probation and parole officer Ken Seguin. He also failed to cause an investigation to be conducted into the legality of the purported settlement between David Silmsers and the Diocese of Alexandria-Cornwall in the fall of 1993. Moreover, Staff Sergeant Brunet ought to have taken measures to ensure that notes and records were properly kept and stored, and that they were retrievable. He also failed to ensure that complainants making allegations of historical sexual abuse were dealt with appropriately, offered support, and kept apprised of the status of the investigation into their complaints.

It is also clear from the review of the evidence that Constable Heidi Sebalj failed to conduct a thorough, adequate, and timely investigation into allegations of sexual abuse made against Father Charles MacDonald and Ken Seguin by David Silmsers. She failed to keep proper notes and records of her investigation. Constable Sebalj failed to update OMPPAC in a timely manner with respect to her investigation and contact with David Silmsers. Constable Sebalj did not report to the Children's Aid Society that there might be children in need of protection as a result of the allegations made against Father Charles MacDonald and Ken Seguin by David Silmsers. She also did not properly brief her supervisors on the progress of the investigation. Moreover, Constable Sebalj failed to conduct a thorough, adequate, and timely investigation into the legality of the purported settlement between David Silmsers and the Diocese of Alexandria-Cornwall in the fall of the 1993. In addition, she did not take appropriate steps to ensure that Mr. Silmsers' refusal to proceed with his complaints were made free from coercion, duress, or inducement. And very importantly, Constable Sebalj failed to offer the victim support and to keep Mr. Silmsers informed about the investigation.

Cornwall Chief of Police Claude Shaver and Deputy Chief Joseph St. Denis did not take measures to ensure that policies, practices, and procedures were in place and/or enforced to ensure that the investigation into allegations of historical sexual abuse by Mr. Silmsers were assigned priority and conducted in a timely manner. They failed to ensure that a comprehensive investigation was conducted into allegations of historical sexual abuse made by David Silmsers in December 1992 against Cornwall probation and parole officer Ken Seguin and Father Charles MacDonald. In addition, Chief Shaver failed to have in place and enforce

policies, practices, and procedures that would have ensured that investigators and other members of the Cornwall Police Service were properly supervised in the conduct of their investigations of sexual abuse of young people. Chief Shaver also failed to institute proper practices or develop protocols to ensure that there was effective cooperation with other public institutions, such as the Children's Aid Society. I also find that Chief Shaver, by not instructing his officers to obtain and examine the settlement documents, failed to investigate or cause an investigation to be conducted into the legality of the purported settlement between David Silmsers, the Diocese of Alexandria-Cornwall, and Father Charles MacDonald in fall 1993.

With respect to Deputy Chief Joseph St. Denis, he failed to ensure that investigators and other members of the police force were properly trained in the conduct of investigations into allegations of historical sexual abuse. Moreover, he did not enforce practices and procedures that would have ensured that notes and records were properly kept and stored, and that they were retrievable. Deputy Chief St. Denis also failed to develop policies or enforce practices that would have ensured that complainants making allegations of historical sexual abuse were dealt with appropriately, offered support, and kept apprised of the status of the investigation. He also failed to develop practices and/or protocols to ensure there was effective cooperation with other public institutions such as the Children's Aid Society. Furthermore, Deputy Chief St. Denis did not take measures to ensure that the Officer in Charge of the Criminal Investigation Bureau assigned an experienced male investigator, as requested by the complainant, to the David Silmsers case. He also failed to supervise the Officer in Charge of the Criminal Investigation Bureau with respect to the allegations of historical sexual abuse made by David Silmsers in December 1992.

On January 6, 1994, David Silmsers's statement to the Cornwall Police Service regarding his allegations of child sexual abuse appeared in the media. The story was aired on CJOH-TV by Charlie Greenwell, and newspaper reports appeared in the *Standard-Freeholder*, the *Ottawa Citizen*, and the *Ottawa Sun*. This is discussed further in the following sections.

Ottawa Police Service Asked to Investigate Allegations of Cover-up by the Cornwall Police Service in the Silmsers Matter

In January 1994, Acting Chief Carl Johnston contacted the Ottawa Police Service and spoke to Deputy Chief Donald Lyon about the prospect of having an outside police force review an investigation conducted by the Cornwall Police Service (CPS). Acting Chief Johnston asked the Ottawa Police Service:

1. to conduct a review of the investigation carried out by members of the Cornwall Police Service into allegations of sexual assault made by David Silmsner and to determine if the investigation was efficient; and
2. to assess whether members of the Cornwall Police Service downplayed or concealed the allegations.

The Deputy Chief of the Ottawa Police Service asked Superintendent Brian Skinner to conduct this review of the Silmsner investigation. It was decided that Staff Sergeant William (Bill) Blake, who was in the Criminal Intelligence Section of the Ottawa Police Service, would work with Superintendent Skinner on the review of the CPS investigation.

The two officers travelled to Cornwall on January 10, 1994. Acting Chief Johnston asked the Ottawa police officers if they would also investigate the means by which a Cornwall radio station had come into possession of David Silmsner's statement to the police. Superintendent Skinner replied that he would not conduct a separate investigation but would convey any relevant information that came to his attention on this issue. Superintendent Skinner and Staff Sergeant Blake met with Deputy Chief Joseph St. Denis and Staff Sergeant Luc Brunet and were given case notes and documents pertaining to the Silmsner investigation.

Superintendent Skinner made it clear that it was not within his mandate to reinvestigate the Silmsner case. Neither David Silmsner nor other potential witnesses would be interviewed by the Ottawa officers.

Superintendent Skinner and Staff Sergeant Blake were in Cornwall for eight days, from January 10 to January 18, 1994. It was decided that Staff Sergeant Blake would be responsible for recording the notes of the meetings and interviews. Staff Sergeant Garry Derochie helped the officers arrange interviews with various members of the Cornwall Police Service.

The Ottawa police officers met with several members of the Cornwall Police Service, including Constable Heidi Sebalj, Staff Sergeant Brunet, Staff Inspector Stuart McDonald, Sergeant Claude Lortie, and Deputy Chief St. Denis. They also interviewed Crown Attorney Murray MacDonald and Richard Abell, the executive director of the Children's Aid Society.

No Investigative Activity for Over One Month, Lack of Documentation and Inadequate Reporting Process

A number of problems emerged from the beginning of their review of the investigation. The officers learned from their interviews that Sergeant Steve Nakic had received Mr. Silmsner's complaint on December 9, 1992. As I discussed

earlier, Chief Claude Shaver had initially assigned Sergeant Lortie as the investigator in the Silmser matter, but the officer needed to take time off from work for a surgical procedure. Chief Shaver then instructed Constable Sebalj on January 13, 1993, to assume responsibility for the investigation. But no investigative activity took place until January 28, 1993, more than one and a half months after the complaint was received from Mr. Silmser. As Superintendent Skinner testified:

No interview with him was conducted until well into January, probably a month and a half or five weeks anyway, after the receipt of the initial complaint. So somebody wasn't supervising somewhere.

... [A]n investigation of that potential complexity and importance should have got off, in my opinion, to a much quicker start than that.

(Emphasis added)

Another serious problem was that the only documented record of the complaint was Sergeant Nakic's internal correspondence: "No report of any kind had been generated, no formal record of the investigative resources assigned to the complaint existed." As Superintendent Skinner states in his Report, "There are no records to enable anyone, within or without the Cornwall Police Service, to follow the progress of the investigation through its early stages." A further problem was that Sergeant Lortie, the original investigator, reported to the Chief of Police for the Silmser matter. This was a "questionable" decision as it "effectively removed Staff Sergeant BRUNET, the officer in charge of CIB, and Deputy Chief ST. DENIS, the officer having overall responsibility for CIB, from the management structure" for this investigation.

Constable Sebalj Remains Responsible for Silmser Investigation Despite Her Inexperience and the Complainant's Request for a Male Officer

It was clear from the inception of this investigation that the complainant was uncomfortable speaking with a female police officer about the sexual acts. As Superintendent Skinner and Staff Sergeant Blake wrote in the Report, when Constable Sebalj made her first contact with David Silmser on January 13, 1993, "SILMSER immediately pointed out that he was uncomfortable speaking with a female investigator and asked that a male officer be assigned." Mr. Silmser agreed to an interview with the CPS on January 18, 1993, with the proviso that a male officer be assigned to the investigation. He subsequently cancelled the appointment. In a further telephone call with Constable Sebalj on January 26, Mr. Silmser again expressed his discomfort speaking with a female police officer about the subject of his complaint. This was discussed with Chief Shaver and Sergeant

Ron Lefebvre the following day, but the Chief decided nonetheless to have Constable Sebalj remain in charge of the investigation. Superintendent Skinner stated that in these types of investigations, the general practice is to appoint a police investigator of the same gender:

Typically ... when it's an investigation of a complaint of that nature, a very personal situation, you try to appoint an investigator of the same gender as the complainant. It just makes things much easier, much more comfortable.

The Ottawa Police Superintendent also emphasized the importance of establishing a good rapport with the complainant and creating an atmosphere in which the victim feels comfortable disclosing as much information as possible:

... [I]t's critical early in an investigation that the investigator establish a good relationship and rapport with the victim in order to elicit whatever information you're looking for in order to pursue the investigation.

Another serious problem identified by the Ottawa police officers was that Constable Sebalj lacked experience in sexual assaults:

... In spite of her lack of experience and the fact that the victim was at first unwilling, later reluctant to cooperate with her, Chief SHAVER left her in charge of the investigation. He should have assigned a more experienced male investigator.

Superintendent Skinner elaborated in his testimony:

... [I]t's my belief that she was far too junior and inexperienced at that time to be given responsibility for such a potentially complex and even explosive investigation.

... I think—and again, I can only put myself in the position of someone in charge of the Criminal Investigation Division of a ... much larger force, I would have found an investigator who was ... much more experienced specifically in that type of investigation and who had a little bit more time involved in those types of investigations.

The Ottawa officers conceded that Constable Sebalj was manipulated by the complainant during the course of the investigation. David Silmsen changed

appointments, failed to appear at arranged times, and was “generally difficult.” In their view, “A more experienced investigator may not have had the same problems,” and “there may not have been this resistance and obstruction” from the complainant. As mentioned, Sergeant Lortie returned to work after a minor surgical procedure on January 11, 1993, two days before Constable Sebalj was assigned the file. Given Constable Sebalj’s inexperience and the complainant’s request for a male officer, an important question that arises is why Sergeant Lortie was not reassigned the Silmsers investigation in mid-January 1993.

Failure to Recognize Urgency of Investigation

On January 13, 1993, the Cornwall police officers knew that David Silmsers had approached the Church with allegations of sexual abuse. This was confirmed on February 16, 1993, when Mr. Silmsers informed Constable Sebalj that Monsignor McDougald had called him and had discussed a civil settlement. Constable Sebalj was also aware from David Silmsers that he had told Mr. Ken Seguin that he was laying charges solely against the priest and that he did not want to proceed at this time with the investigation of the probation officer despite repeated sexual assaults by him. This information, according to Superintendent Skinner and Staff Sergeant Blake, “should have added a certain urgency to the investigation.” But “apparently,” it “did not,” wrote the Ottawa officers in their Report. As Superintendent Skinner said, because there was the “possibility at least that two people who were committing these types of offences were within the community ... the situation should be looked at as quickly as possible.”

Moreover, Father Charles MacDonald’s lawyer contacted Constable Sebalj on February 25, 1993, and indicated that his client was willing to undergo a polygraph examination. The Cornwall police did not follow up on this, despite the fact that the police force had an experienced polygraph examiner, Constable Brian Snyder. Superintendent Skinner and Staff Sergeant Blake thought the polygraph “should have been pursued.”

Failure to Meet With a Potential Witness

Constable Sebalj obtained statements from altar boys and members of church musical groups, two of whom clearly “recalled incidents of homosexual behaviour” by the priest. According to the Constable’s notes, she had a telephone call with a man who had been an altar boy in his youth. This man indicated to Constable Sebalj that the investigation was “scary stuff and very close to home,” and that he was not comfortable discussing it on the phone but wanted to meet the Cornwall officer in person. When Constable Sebalj told this potential witness she was unable to meet with him, his response was that nothing untoward had occurred. Superintendent Skinner and Staff Sergeant Blake stated in their Report

that Constable Sebalj “should have arranged to see him in person.” She should have travelled to Ottawa to interview him. Constable Sebalj should have understood that it is often very difficult for a victim to disclose sexual abuse and that if the officer is not accommodating, the victim may not be able or willing to discuss the abuse or provide other details important to an investigation. As Superintendent Skinner testified:

... In every case where there was a reasonable expectation of furthering the investigation by meeting with a witness or a potential victim, then I think she should have met with them.

And there was one glaring example of that where she was contacted by a probable victim ... who was resident in Ottawa, who told her that he had things that he wanted to tell her but he was never interviewed.

... [H]e made it clear he didn’t want to discuss it on the telephone, he wanted to do it by way of a personal interview but that didn’t happen.

Crown Attorney Murray MacDonald’s Conflict of Interest

Constable Sebalj, as mentioned, met with Crown Attorney Murray MacDonald and spoke with him about some of the witnesses whom she had interviewed. At this March 2, 1993, meeting, the Constable had not yet spoken to the two witnesses who had disclosed sexual improprieties by the priest. Murray MacDonald expressed some doubts about the grounds for the prosecution.

Mr. MacDonald had revealed to Constable Sebalj during the CPS investigation that he could be in a perceived conflict of interest. The Crown attorney indicated that if it was likely criminal charges would be laid, he would refer the matter to another Crown. When Staff Sergeant Blake and Superintendent Skinner met with Murray MacDonald, they asked him to elaborate on the conflict of interest. Mr. MacDonald stated that in past years he had represented his church in Ecclesia 2000 and had assisted with the formulation of policies for the Catholic Church for cases of sexual misconduct by members of the clergy.⁴⁴ Because of

44. Murray MacDonald testified that he was a member of a Diocesan committee that addressed the issue of civil settlements regarding victims of abuse. It was recommended by the committee that the Church cooperate with the police from the outset and allow the police to investigate these types of allegations. The committee was advocating transparency and Mr. MacDonald testified that he “felt very strongly” and was the “main mover” with regard to this recommendation. When Mr. MacDonald learned that the recommendation had not been placed on the ballot, he walked out of the session. Mr. MacDonald stated in his evidence that he was opposed to confidentiality clauses or gag orders in these types of civil settlements with victims of abuse.

this involvement, Mr. MacDonald thought this could place him in a perceived conflict with regard to conducting prosecutions against members of the clergy.

As discussed, the CPS received a document dated September 3, 1993, signed by David Silmser and his lawyer, Sean Adams, indicating that the police investigation should be terminated as Mr. Silmser had received a civil settlement. About eleven days later, Murray MacDonald wrote a letter to the Cornwall police in which he confirmed the Ministry policy of not compelling reluctant victims of sexual crimes to testify. He also discussed in this letter of September 14, 1993, the uncertainty of Constable Sebalj with respect to the existence of reasonable and probable grounds in the Silmser case. In this “very strongly worded” letter, said Superintendent Skinner, Murray MacDonald expressed difficulties in proceeding with the case:

... [T]his case is fraught with (due to his own conduct) a very non-credible complainant, saddled with an evident ulterior motive for making these allegations.

... This is especially so when that reluctant witness will be “crucified” in cross-examination.

In his interview with the Ottawa officers, Murray MacDonald also stated that he had reservations about Constable Sebalj’s experience and ability in conducting an investigation of this complexity.

Superintendent Skinner and Staff Sergeant Blake were critical of Murray MacDonald’s conduct in the Silmser investigation. In their Report, they stated that the Crown attorney had been “less than effective in his support of the Cornwall Police Service” in this investigation. In their opinion, Mr. MacDonald, after declaring his conflict of interest, should have “referred all aspects of the investigation and all inquiries by the investigator to another Crown Attorney.” And, they stressed, “Above all, he should not have placed himself in the position of writing a letter confirming that it was not advisable to charge a person against whom he would not conduct a prosecution.” The Ottawa officers also stated that Murray MacDonald “had a responsibility to voice his concern” about Constable Sebalj’s inexperience in this investigation to either the Chief of Police or the Deputy Chief. Crown Murray MacDonald’s involvement in the Silmser matter is discussed further in chapter on the institutional response of the Ministry of the Attorney General.

Leak of Victim’s Statement to the Public

Superintendent Skinner and Staff Sergeant Blake obtained little additional information with regard to the means by which a Cornwall radio station and

Charlie Greenwell of CJOH television came into possession of David Silmsers's statement. Chief Shaver told the Ottawa police officers that Mr. Greenwell had stated during a broadcast that he had received the statement from John Parisien, President of the Cornwall Police Association. In their Report, Superintendent Skinner and Staff Sergeant Blake discuss Constable Perry Dunlop's breach of trust, which resulted in the document becoming public:

It is already established that Cst. Perry DUNLOP was responsible for the original breach of trust which resulted in the document becoming public and he should bear all of the consequences for his actions.

It is important to note that evidence was not adduced at the Inquiry regarding the identity of the person who conveyed David Silmsers's statement to the media. It is also essential to note that the Divisional Court dismissed the case against Perry Dunlop under the *Police Services Act* for releasing a copy of the Silmsers statement to the CAS and divulging a matter required to be kept confidential. This is discussed in further detail in this Report.

“Inept and Ineffective” Investigation of the Cornwall Police Service

In the January 24, 1994, Report submitted by Superintendent Skinner and Staff Sergeant Blake to Acting Chief Johnston, the officers conclude that the investigation by the Cornwall Police Service of the Silmsers allegations was “inept and ineffective”:

The investigation into the allegations made to the Cornwall Police Service by David SILMSER was inept and ineffective. The responsibility for this rests with the Cornwall Police Service. The problems are systemic and, during the time of my review, still existed.
(Emphasis added)

Several problems were highlighted in the conclusion of the Report. First, CPS officers with inadequate experience and training were involved in the Silmsers investigation. In particular, Constable Sebalj did not have the qualifications to assume responsibility for such a complex file. As stated in the Skinner Report, Constable Sebalj was:

... not sufficiently qualified to undertake such a complex and potentially contentious investigation, was left to her own devices and failed to see the urgency of the situation. She was not adequately supported and, given the early objections to her assignment to the investigation by

David SILMSER and his constantly difficult and obstructive behaviour, should never have been left in charge.

Second, there was a serious problem in the CPS with respect to record keeping in the Silmsers investigation. The documentation of this investigation was extremely deficient. As Superintendent Skinner said, there was “nothing to track the progress of the investigation” and if Constable Sebalj had become the victim of a tragedy, no officer of the Cornwall Police Service would have had access to information to this case:

... [T]here was a very serious lack of anything concrete to enable—had Constable Sebalj been the victim of an unfortunate accident or something like that, and wasn’t able to provide the information that she did through her notes and her verbal briefings, there would have been nothing to track.

...

... The concern was that there wasn’t a documented written flow of events dealing with the investigation and the progress of the investigation that could be monitored and could be assessed by supervisory and management personnel and which would also serve to be a living record of the investigation and its progress should anything happen to the investigator.

When the Cornwall Police Service had its first formal interview with David Silmsers on January 28, 1993, no written report was generated. There should have been a written record of the progress of the investigation on the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) or by other means so that other members of the police force could review the file. The interview lasted three hours. As mentioned, three CPS officers—Constable Sebalj, Sergeant Lefebvre, and Constable Kevin Malloy—each took notes, which the Ottawa officers also considered a problem as discrepancies could arise. Superintendent Skinner agreed that the first interview with Mr. Silmsers was a “very important” stage of the investigative process. If the matter went to trial, this was not the ideal way to start.

Constable Sebalj was away from the office for a few weeks in May and June 1993 to attend two courses at the Ontario Police College. During that time, no arrangements seemed to be made for another officer at the CPS to continue this investigation. The Ottawa Superintendent thought the Cornwall Police Service should have postponed Constable Sebalj’s courses at the Police College. Superintendent Skinner explained:

... [S]he was deeply involved in—I was going to say up to her neck, she was deeply involved in a potentially very complex investigation and she was effectively going away for three weeks of courses and during that time no arrangements were made, that I could see, for the investigation to be continued ... [T]hat's just no way to conduct an investigation, in my opinion.

Constable Sebalj had no notes of this investigation from April 29 until August 23, 1993, at which time she received a call from Father MacDonald's lawyer. As mentioned, on August 24, 1993, David Silmsen contacted Constable Sebalj to find out about the progress of the investigation. She told Mr. Silmsen that she was awaiting a meeting with a Crown attorney from out of town to discuss the case. When Staff Sergeant Brunet asked her for a progress report on August 24, Constable Sebalj made the same comment about arranging a meeting with an outside Crown attorney. Staff Sergeant Brunet instructed Constable Sebalj to conclude this investigation as soon as possible.

Superintendent Skinner testified that although “inept” and “ineffective” are “strong words,” they appropriately describe the investigation of the Silmsen complaint by the CPS. Superintendent Skinner summed up the Silmsen investigation as a “systemic breakdown of the Cornwall Police Service.” He referred to the delays after the complaint was received, the lack of attention and sense of urgency, the failure to interview possibly important witnesses, the lack of follow-up regarding the polygraph test, poor documentation of the investigation, and inadequate supervision. “It just has too many holes in it to be an effective investigation,” said Superintendent Skinner:

The complaint was received; nothing was done for five weeks. Then fairly early in the complaint the Service became aware that Mr. Silmsen was in contact with the Church and was seeking settlement and that still didn't seem to add any urgency to the investigation.

... [W]itnesses weren't interviewed that should have been. A suspect who volunteered for a polygraph test didn't have it followed up.

...

... [T]here was no management system in place that I could see to shepherd the investigation along, to supervise its progress. There was just nothing there. There wasn't even anything on paper to track the progress of the investigation. (Emphasis added)

There was clearly inadequate supervision of Constable Sebalj. Superintendent Skinner was critical of the commissioned police officers in the Cornwall Police Service: “I could see no clear direction or supervision or management skills from any of them”:

People who lacked the proper background and training were placed in positions for which they were ill-suited and unqualified and no management systems existed which would enable supervisors to track the progress of investigations. The mechanics are in place, but they are not effectively utilized.

...

In fact, no-one monitored the progress of the investigation and, even if someone had chosen to do so, their only recourse would have been to ask Cst. SEBALJ since no formal record of the complaint and the resulting investigation existed until October 1st, 1993, when Chief SHAVER ordered Staff Sergeant BRUNET to enter a full report on OMPACC [sic].

The Report, as mentioned, was critical not only of the officers involved in the investigation but also of senior members of the Cornwall Police Service. Problems clearly existed between Chief Shaver and Deputy St. Denis during the course of the investigation. There was inadequate communication, and Deputy St. Denis stated that the Chief had failed to keep him informed of the Silmsers investigation. As Superintendent Skinner wrote:

There are strong indications that communication between Chief SHAVER and Deputy Chief ST. DENIS was very poor. During my interviews with them, each blamed the other for communication breakdowns and a lack of direction. Chief SHAVER indicated that any information he received concerning the SILMSER case came from Deputy Chief ST. DENIS, and that he in fact directed him to write the January 8th memo to Staff Sergeant BRUNET pointing out its urgency. The Deputy Chief claimed that the Chief assumed overall control of the investigation and did not keep him informed.

Superintendent Skinner stressed that it is “critical that there is ongoing and constant exchange of information between” the Chief and the Deputy Chief: “[T]hey’re running the force.” They are responsible for ensuring that proper

resources are appropriated and that good communications exist on the force. In Superintendent Skinner's view, there "appeared to be a real lack of communication within the Cornwall Police Service." Superintendent Skinner also stated that middle management did not supervise the investigation: "Staff Sergeant Brunet, as I understand it, was the head of the Criminal Investigation Bureau and should have been as involved in the investigation as Constable Sebalj in a supervisory position, of course."

No Cover-Up and Recommendations That an Outside Police Agency Conduct a Thorough Investigation of the Silmser Complaint

Superintendent Skinner and Staff Sergeant Blake concluded that there was no cover-up of the matter by the Cornwall Police Service. Rather, the Silmser investigation was characterized by a lack of adequate resources and "a lack of managerial direction and systemic support." As the 1994 Report states:

... [T]here was no attempt by any member of the Cornwall Police Service to "cover up" the situation. It was simply a case of inadequate resources being applied to an investigation, the potential complexity of which was not properly identified.

The Skinner Report also states that although there was no legislated duty to report the Silmser allegations of abuse to the Children's Aid Society, it could be argued that "it would have been prudent to inform the Childrens [sic] Aid Society." I discuss in greater detail the obligation to report complaints of child sexual abuse in the chapter on the institutional response of the Children's Aid Society.

The Skinner Report recommended that "an outside police agency be asked to conduct a complete investigation into the events and allegations which resulted from this particular complaint." Superintendent Skinner later learned that the Ontario Provincial Police (OPP) became involved in this matter. The following chapter discusses Project Truth and the involvement of the OPP in the investigation of cases of historical sexual abuse of children and young persons in the Cornwall area.

In my view, Superintendent Brian Skinner and Staff Sergeant Blake of the Ottawa Police Service conducted a good review of the Cornwall Police Service investigation of the Silmser allegations of sexual assault. As is evident in earlier sections of this chapter, I agree with many of their conclusions regarding the problems involved in the Cornwall Police Service investigation of David Silmser's allegations that he was sexually abused by a priest and a probation officer when he was a young person.

News Releases by Cornwall Police Services Board Regarding Skinner Report: Transparency?

January 11, 1994 Press Release: Courville Undertakes That Board Will Be Forthcoming With Ottawa Police Review of Silmsers Investigation

After David Silmsers statement was leaked to the press on January 6, 1994, the Cornwall Police Services Board decided to issue a news release. Mr. Leo Courville, Chair of the Board, who signed and is identified as the “originator” of the January 11, 1994, release, stated that “the impetus behind the press release” was damage control.

The news release states:

In view of extensive media coverage over the past week concerning the investigation of an alleged sexual assault, and the possibility of a cover-up or other inappropriate action on the part of the Cornwall Police Service, the Police Services Board wishes to make the following facts known.

A chronology is provided of the Silmsers matter from December 9, 1992, when a “male complainant” informed the Cornwall Police Service (CPS) that he had been sexually assaulted by a member of the local clergy and a local probation officer about twenty years ago, until the first week of January 1994, when a Cornwall radio station received “what was purported” to be a “complete copy of the complaint filed by the complainant” with the Cornwall police. Mr. Courville states in the news release that the complainant told the police there was “no need to rush the investigation,” that he decided not to pursue any criminal action against the probation officer, and that because of a civil settlement with Church officials, the complainant also ultimately decided that he did not want to proceed with a criminal prosecution against the member of the local clergy.

Ottawa Police Superintendent Brian Skinner questioned the statements in the January 11, 1994, press release that suggested delays in the Silmsers investigation were not a problem because the complainant had told the CPS to take the time necessary to complete the investigation. The press release states:

On March 2, 1993, the complainant contacted the investigating officer and informed the officer that there was no need to rush the investigation and to feel free to take whatever time was necessary to complete the investigation. Specifically, the complainant stated, “three months, six months, or eight months.” Again, on August 24, 1993, the complainant

for a second time, stated that there was no problem with the timing of the matter.

Superintendent Skinner stressed that the fact that the complainant did not express concern about long delays in the investigation was no justification for the length of time it took for the Cornwall police to address the Silmsers complaint. Not only did this reasoning not make sense to Superintendent Skinner, but he would in fact “be suspicious of getting information like that from the complainant.”

In the January 1994 press release, Mr. Courville undertook as Chair of the Cornwall Police Services Board, “to fully inform the public what has actually happened to date.” That is, he assured the public that the Board would be transparent with respect to the alleged sexual assault by a local priest and a probation officer. He informed the public that senior management of the Cornwall Police Service had asked the Ottawa Police Service to conduct a review of the sexual assault investigation. Mr. Courville also stated in the press release that the Board “gives its assurance that any and all future steps necessary to resolve all outstanding issues and questions, will be taken.” Mr. Courville wanted to assure members of the public that there had been “no attempt” by the CPS at a “cover-up.”

Mr. Courville testified that the purpose of the media releases and the press conference in early 1994 was “to be as open and transparent as possible ... [T]he whole objective was to ensure the public that we were doing as much as possible to have an open approach to this.”

In the press release, the Cornwall Police Services Board invited the complainant to pursue his concerns with the Cornwall police or another appropriate police agency and/or to initiate a police complaint under the *Police Services Act*. The Board also assured other aggrieved parties in this matter that it would cooperate in any other investigation necessary to resolve outstanding issues.

Mr. Courville and Acting Chief Carl Johnston held a press conference on January 11, 1994, at which time the news release was issued. An article published in the *Standard-Freeholder* the following day, entitled “City Police Under Investigation: Ottawa Force Probes Handling of Sexual Assault Complaint,” states that Mr. Courville plans to be forthcoming and transparent with the public regarding the CPS investigation of the (Silmsers) allegations of sexual assault by a priest and a probation officer:

Courville suggested at the press conference that police would release the findings to the public.

“We want to make the factors known. We will try to be as forthcoming as we can be.”

...

“From everything we’ve seen all of the information was acted on thoroughly. We hope that by bringing out all of the facts that there can be no doubt that police handled this appropriately.”

Mr. Courville reiterated in his testimony that he and the Police Services Board “wanted to make everything as forthright as we could” and “as transparent as possible.” He agreed that members of the public who read this newspaper article in the *Standard-Freeholder* expected the Cornwall Police Service and Board to be truthful about the findings in the Ottawa Police Service review of the Silmser investigation.

February 2, 1994, Press Release and News Conference

Mr. Courville stated that the February 2, 1994, press release was also designed to provide the public with a transparent and thorough understanding of the CPS investigation of the Silmser allegations of sexual assault. The Chair of the Police Services Board agreed that when Acting Chief Johnston approached the Ottawa police to conduct the review, he made it clear that he wanted the Ottawa police to determine whether the CPS investigation had been effective and whether Cornwall police officers had concealed, downplayed, or covered up information. Mr. Courville expected the information he conveyed in the February press release and at the press conference regarding the findings in the Skinner Report to be reflected in the media.

But it is clear that Leo Courville, who was responsible for the February 2, 1994, news release, failed to include many of the essential findings in the Skinner Report. The conclusion of Superintendent Skinner and Staff Sergeant Blake was that the Silmser investigation was “inept and ineffective.” Lead investigator Constable Heidi Sebalj was found to be inexperienced and, in their opinion, should not have been assigned the responsibility for this case. Moreover, the Ottawa officers thought that the Crown attorney should have removed himself from the file because of his declared conflict of interest. None of this information, acknowledged Mr. Courville, is reflected in the press release. The press release states:

The members of the investigative team have indicated in their report to the A/Chief of Police, that they are satisfied that there was no attempt by any member of the Cornwall Police Service to “cover-up” the situation. In addition, the report makes it clear that although the

investigative team saw substantial evidence of excellent police work being done by accomplished police officers, there was a noticeable lack of Senior Management direction and systemic support throughout the course of the investigation. The report noted that this criticism was not intended as an indictment of the Police Service and its members.

Mr. Courville conceded that the press release “doesn’t cover a number of the problems that Mr. Skinner has identified in the investigation” and that “there were negative aspects in the report that do not find themselves on the pages of this press release.”

Superintendent Skinner testified that in his view, some statements in the press release were out of context and very little of the substance of his Report to the Cornwall Police Service could be found in the press release signed by Mr. Courville.

As a result of this press release, journalists, the public, and other members of the media did not have an accurate understanding of the findings in the Skinner Report with respect to the Cornwall police investigation of the Silmser matter. An article published in the *Ottawa Citizen* the day after the press release, entitled “Police to Begin New Probe of Priest,” stated that:

... an Ottawa police review has found that Cornwall investigators did “excellent police work.” The review found no evidence Cornwall police had quashed the investigation to protect clergy members.

Clearly, the Skinner Report did not conclude that the Cornwall police investigation did “excellent police work” in the Silmser matter—quite the contrary. Superintendent Skinner found the Cornwall investigation “inept and ineffective.” Mr. Courville agreed “there seems to be a misinterpretation in that regard.” But he denied that he did not want the media to know the conclusion of the Skinner Report. In the *Ottawa Citizen* article, the Cornwall Chief of Police is also quoted:

In spite of this, Cornwall Chief Carl Johnston asked the criminal investigations branch of the OPP to begin a new investigation.

“We believe we have done this (investigation) and done this completely,” Johnston said Wednesday. “But it’s a matter of public perception that it’s being reopened by the OPP.”

The article also appears to state that the Cornwall Police Service, despite its “excellent police work,” decided to ask the Ontario Provincial police to review

the Silmser matter. It really does not convey to the public that Superintendent Skinner explicitly recommended in his Report that “an outside police agency be asked to conduct a complete investigation into the events and allegations which resulted from this particular complaint.” Yet Mr. Courville maintained that “there was never any attempt to suggest that the Cornwall Police Service did an exemplary job in this investigation.” He reiterated that the intent was to be as transparent as possible. And he denied that the Board was trying to put “a spin on things to cast the Police Service in a way that was more favourable than it might have been otherwise.”

Despite Mr. Courville’s view that the press releases ought to be “as accurate as possible” and that the Cornwall Police Services Board and Cornwall Police Service were trying to be “as transparent as possible,” he failed to provide accurate and appropriate information to the community through the media. This, in my opinion, only served to fuel the growing distrust and discord in the City of Cornwall. The press release should have stated that the Ottawa police had concluded that although there was no cover-up, the CPS investigation was ineffective and incompetent, and that they recommended that another force re-investigate.

The problem that arose was that as a result of the press report and media articles, people such as former judge and MPP Garry Guzzo and members of the public believed that the Skinner Report did not find any problems with the CPS investigation of the Silmser complaint. This misinformation fuelled one of many conspiracy theories in this city. Mr. Courville was aware that people in the Cornwall community and individuals such as Mr. Guzzo had come to believe that there were serious problems in the Cornwall Police Service that were not being revealed to the public. Despite Mr. Courville’s contention that he was trying to be transparent, this did not occur in the news releases that he was responsible for as Chair of the Cornwall Police Services Board. This had serious repercussions in the Cornwall community for many years and this misinformation continues to greatly affect this southeastern area of Ontario. Unfortunately, neither Mr. Courville nor members of the Cornwall Police Services Board took measures to rectify this misinformation in the press releases regarding the content of the Skinner Report. Mr. Courville said at the hearings that “in hindsight, we could have been perhaps a little bit more clear, more specific. That didn’t happen.” The Chair of the Cornwall Police Services Board further stated:

With regard to the press releases that were formulated ... to the degree that the evidence shows that they may have been deficient or may not have covered all of the points put forward in the—particularly in the Skinner Report, I accept that.

It is my view, based on a careful review of the evidence, that Leo Courville failed to provide appropriate and accurate information through the media regarding the historical sexual assault investigation conducted by the Cornwall Police Service. Moreover, Mr. Courville failed to take measures to correct the misinformation to ensure that the people of Cornwall received accurate information on the findings in the Skinner Report.

Problems With Morale at the CPS: Internal Dissension

It was evident from the testimony and documents filed at the Inquiry that there were problems with morale at the Cornwall Police Service (CPS) for many years. As early as 1978, the Ontario Police Commission, in its audit of the CPS, noted a morale problem among younger officers “largely connected with the promotional system—or lack of it.” The investigators also found “a number of weaknesses in the operation and administration of the Force.” In addition, they noted a very low clearance rate for criminal offences in comparison with other Ontario police forces.

In an inspection of the CPS a few years later, in 1982, inspectors again observed that morale was “lower than it should be.” Junior officers stated that one of the main reasons for poor morale was the “tyrannical” behaviour exhibited by the Staff Inspector responsible for Field Operations. Officers interviewed by the inspectors stated that Chief Earl Landry Sr. did not seem to be in control of the force.

When Claude Shaver became the Deputy Chief of Police in April 1983, he was asked by Chief Earl Landry Sr. to address issues raised in the 1978 and the 1982 inspection reports. Claude Shaver noted that the force appeared to be split into two groups, the uniform patrol and police officers involved in criminal investigations. This was also noted by auditors in 1989.

Although morale in the Cornwall Police Service improved in the mid-1980s, the problems resurfaced in the late 1980s. In an inspection of the CPS conducted in April 1989, inspectors again commented that “morale was found to be low.” The Ontario Police Commission Report stated that “[a] major cause of this problem is due to the lack of communication throughout the entire organization.” Claude Shaver was then the Chief of Police, and his Deputy Chief was Joseph St. Denis. In his testimony at the Inquiry, Staff Sergeant Garry Derochie agreed that there were serious communication problems between the police chief, senior police officers, and lower rank officers at that time. Similarly, Deputy Chief St. Denis did not disagree with the observations of the inspectors in 1989 that there was a lack of consultation between the heads of departments and the office of the Chief of Police. Chief Claude Shaver took issue with some of the observations on

morale and communication problems between the police chief, senior officers, and those in the lower ranks in the Ontario Police Commission Report. But he did state that the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) had been introduced at that time and that it had been badly received. Claude Shaver attributed a lot of the tension during this period to the problems that existed in the City of Cornwall, including the large number of residents who were on social assistance.

Deputy Chief St. Denis testified that when he joined the CPS in 1987, he had discerned tension in the police force. He noticed that several members of the force were off on stress leave. He also noticed that there was not very much change in the force between 1987 and 1989, and that problems previously identified had not been addressed or rectified. At the time the 1989 Inspection Report was completed, he knew that morale on the police force was low.

In 1990, the Morale Report was released. It was commissioned by the Cornwall Police Association and was authored by Constable Shawn White. The Report stated that “there currently exists a tremendous morale problem within the Cornwall Police Department.” It further said:

The situation has become so critical that it is being experienced by all personnel and in all departments. The performance of the worker has suffered greatly ...

The stated objective of the Morale Report was a “collective attempt by police brothers and police sisters to identify the factors that are responsible for this disarray” and to rectify the situation. Staff Sergeant Derochie explained that the Report had come from officers in the rank and file. The Morale Report stated that many officers “feel betrayed and abandoned” and “feel that their concerns have been ignored or forgotten.” The Report stressed that there was discontent with management in the organization such as the Chief of Police and the Deputy Chief. The following excerpt from the Report reflects the sentiment that existed among members of the Cornwall Police Service:

Many have become disenchanted with the leaders of the police administration ... Where there was once respect and loyalty, we now have animosity and despair. The result is resentment, distrust and dissatisfaction with those empowered to lead, namely the Chief and the Deputy Chief.

The frustration that now exists has also eroded the harmony between co-workers ... There lacks common purpose. Everyone seems to be

focused upon his or her personal goals, and distrusts the goals of his or her fellow worker. Many members feel that they have had to become callous to avoid being stabbed in the back. Many now feel that they must alienate themselves from others in different branches within the police force. The spirit of co-operation and communication is missing and is fragmenting the union necessary for this institution to be effective.

Inspector Richard Trew testified that policing in Cornwall in the 1980s and 1990s was difficult for a number of reasons, which included smuggling issues in the community, the introduction of the *Charter of Rights and Freedoms*, the *Askov* decision,⁴⁵ and human resource problems in the police force. Problems identified in the Morale Report included lack of leadership, poor deployment of manpower and resources, and lack of communication. There was reference to supervisors whose behaviour was “tyrannical.” It also stated that there was an overabundance of sergeants. The Report further noted that although the Cornwall Police Service had a good training officer, he was restrained by “red tape and command chains.”

The Report stated that it was paramount that morale be the force’s “utmost priority.” It said that there was a lack of direction at the Cornwall Police Service as it entered the 1990s, and it stressed that “wholesale change is needed.” Issue was taken with respect to officers who were given transfers not necessarily based on merit. The Report concluded that the “Chief and Deputy Chief must accept responsibility for the current situation” because “[a]s the head of the Police Force, they are ultimately responsible for the morale of the department. Mistakes that they have made in the past have directly contributed to the current dilemma.” The Morale Report ended with these words:

... [A]ll of us, who make up the Cornwall Police Force must focus deep within ourselves and evaluate how our thoughts, our words, our actions, have affected morale. Some of us have abandoned our commitment to serve and protect the members of this community. We all too easily blame others for the problems we experience and have given up trying to be the best that we can be. We must always remember that the moment that we stop trying, is the moment that we become part of the problem. Now is the time to put pride back into P.R.I.D.E.

45. The Supreme Court decision *R. v. Askov*, [1990] 2 S.C.R. 1199 dealt with the right of the accused to a trial within a reasonable time pursuant to section 11(b) of the *Charter of Rights and Freedoms*. After this decision was rendered, many criminal cases were dismissed.

Constable Brian Payment testified that the most significant morale issue that the Cornwall Police Association addressed with management at CPS when he was on the executive was the lack of manpower and equipment. Discussions between the Police Association and management on these issues, he said, were not fruitful. During Constable Payment's tenure on the board between 1986 and 1990, Claude Shaver was the Chief of Police. The Constable stated that there was mistrust between the Police Association executive and the management of the police force.

Chief Claude Shaver agreed in his evidence that he and the Deputy Chief were responsible for the situation, and in particular the morale of the police force.

Chief Shaver addressed a number of issues raised in the Morale Report in a memo to the members of the Cornwall Police Association on April 26, 1990. He stated that OMPPAC had caused a great deal of concern at the force, but maintained that this technology was the "future." Chief Shaver wrote "both I and the Deputy Chief do accept responsibility for the current morale situation and are taking steps to solve the problem."

At about the same time that the Morale Report was released, staff sergeants in the Cornwall Police Service presented a report of their concerns to management on March 26, 1990. In their view, the CPS was "seriously mismanaged," for which the Chief of Police was responsible. In the opinion of the staff sergeants, the "Chief's actions have resulted in the Office of the Chief of Police losing all credibility with the men and women of the Force, the Police Commission, and the community." The decision making of the police chief was impulsive and occurred without consultation. They also stated that Claude Shaver had an "alarming lack of knowledge concerning the day to day operation" of the force and that he sought every opportunity to be absent from his office, particularly during critical times.

The staff sergeants took the position that they could "no longer function as effective managers because of the irresponsible decisions and actions of the Chief of Police." They further stated that their "authority and credibility are continuously being undermined." They noted that although they had met with the Chief of Police to express their concerns, he had made little effort to modify his attitude or change his conduct. The staff sergeants recommended that the Chief of Police tender his resignation, or alternatively, that the Cornwall Police Commission ask the Ontario Policing Services Division of the Ministry of the Solicitor General to conduct an inquiry into the management of the CPS. Claude Shaver testified that this report from the staff sergeants came as a surprise to him.

Staff Sergeant Garry Derochie agreed that there were some unusual problems at the Cornwall Police Service in April 1990. There was a lack of direction or a

strategic plan at that time. His concern was that the organization did not have a road map and he was of the conviction that morale would be improved if a strategic plan were developed. Others came to share that opinion, and action was taken to initiate the preparation of such a plan.

In a memo on April 4, 1990, senior officers acknowledged receipt of the staff sergeants' 1990 report. The senior officers, Staff Inspector Stuart McDonald, Inspector Richard Trew, and Inspector J. Burke, agreed with the concerns of the staff sergeants: "After lengthy deliberations, it is in an atmosphere of sadness that we concur with their concerns." The senior officers recommended that the matter remain within the confines of the organization and that the Board conduct its own inquiry. When he testified, Staff Inspector McDonald could not recall who drafted this memo but stated that it might have been him. He was the highest ranking of the three inspectors.

In a memo to the staff sergeants and senior officers, Chief Shaver made it very clear that he had "no intention of being pressured into resigning from the Cornwall Police Force." He stated that he had forwarded the reports of the senior officers and staff sergeants to the Board and would await its decision.

In a memo on April 6, 1990, the executive staff informed Chief Shaver that it had reviewed the staff sergeants' report and had concluded that the Chief should not resign. In its view, the problems were complex and one person could not be held responsible: "We recognize that there are difficulties, however, this cannot be blamed on one person but *must* be borne by all." They were receptive to an in-house inquiry conducted by the Board.

The Chair of the Board of Commissioners of Police responded to the reports of the staff sergeants and senior officers, as well as to the Morale Report, on April 12, 1990. The Board confirmed that it fully supported the Chief of Police and disagreed that the force was seriously mismanaged. It took the position that all senior officers should assume responsibility for the management and morale of the force. The Board stated that Chief Shaver would participate in an executive development course at the Canadian Police College "in order to broaden his management base as well as his administrative skills." The Board supported a strategic plan workshop to develop the direction of the police force for the next five years. Suzanne McGlashan was hired as a consultant to deal with these issues. She prepared a report in June 1990.

Ms McGlashan's report was the culmination of a strategic planning session undertaken with the senior management team of the Cornwall Police Service on May 11–12, 1990. It was apparent to Ms McGlashan that there were "very strong signs of discontent with the current operations and management of the Cornwall Police Service." Staff Sergeant Derochie agreed.

Prior to the strategic planning session, members of the senior management team were asked to respond to a questionnaire on problems, strengths, and weaknesses

as well as expectations for the force. It was clear from the responses that senior officers were divided on “philosophies and strategies.”

The strategic planning process ultimately broke down. The Chair of the Board, Ron Adams, had been supportive of the strategic plan, but he passed away. According to Chief Shaver, after the death of the Chair, the Board decided not to allocate funds in the budget for the development of a strategic plan. Deputy Chief St. Denis stated that the breakdown of the strategic planning process had a profoundly negative impact on the Cornwall Police Service. This is further discussed in the following section, on the Cornwall Police Services Board.

Problems with morale continued. In November 1990, an inspection was conducted by the Ontario Police Forces Inspection Program. The inspectors noted that the promotional process did not have the confidence of the rank and file, which was a “contributory factor to the low level of morale within the Service.” The inspectors observed that “dissension” was present at “virtually every level of the Cornwall Police Service” from the rank of constable to the Cornwall Police Services Board. They discerned friction internally within the organization as well as externally with the Police Services Board.

Officers of the Cornwall Police Service who were interviewed stated that Chief Shaver was absent too frequently. They were critical of his “impulsive management style,” and they were not confident that he had adequate knowledge of municipal policing. Although Claude Shaver took issue with the comment that he was an absentee chief, he agreed that there were some communication problems between him and various members of the police force at the time.

After this inspection report, Chief Shaver conducted a three-day strategic planning meeting attended by staff sergeants and senior officers. On December 12, 1990, Chief Shaver and the group appeared before the Board to report on the results of their meetings. The Board Chair, Ron Adams, reported “that the enthusiastic group that greeted Board members expressed confidence in the Strategic Plan, and were visibly buoyed by the progress that evolved during the meetings. They also demonstrated a renewed confidence in Chief Shaver.”

After the strategic planning sessions, Sergeant Rick Carter was assigned as Strategic Planning Officer. His role was to implement the strategic plan. Chief Shaver authored a draft strategic plan after Ms McGlashan left. He stated that he had tried to present it to the Board in March 1993 but that it had not been considered. The purpose of the draft plan was to ensure that the CPS could implement the five-year plan. The Board rejected it. This is further discussed in the section on the Cornwall Police Services Board.

In the summer of 1993, an inspection was conducted by the Ontario Policing Services Division of the Ministry of the Solicitor General. This inspection had

been requested by the Chair of the Cornwall Police Services Board, who had “serious concerns about management, the relationship among stakeholders, and morale.” Mr. Leo Courville testified that he had requested this inspection in order to put the CPS in a position whereby its direction could be identified and its progress could be monitored. Angelo Towndale, another member of the Board, testified that the inspection was prompted by concerns of the Cornwall Police Association regarding Chief Shaver’s fluctuating priorities and absenteeism. The 1993 Inspection Report begins with a community profile of Cornwall: its geographic location, demographics, and the economic position of the residents. After describing the city’s location in relation to Montreal, Ottawa, and Kingston, the Report states:

The Seaway International Bridge provides direct access to New York State. A portion of the boundary of the First Nations territory of Akwesasne extends into the city, as well as spanning jurisdictional boundaries in Quebec and New York State. Approximately 50% of the city’s area is urbanized, with the remainder classified as rural, vacant or undeveloped.

It further stated that the average wage rates in Cornwall were below the national average and that Cornwall had “some of the lowest priced housing in Ontario and in all of Canada.” It reported that the largest population sector was in the twenty-five to thirty-four age category and that the fastest growing sector was the sixty-six and over age group.

In this 1993 inspection, it was found that some recommendations from the previous inspections of 1990 and 1991 had not been implemented. Despite a recommendation that Ms Suzanne McGlashan be retained on an ongoing basis, this in fact had not occurred. The inspectors stated that internally, the CPS “organization is rife with conflicts within and among most ranks and management.” Officers interviewed stated that they had little confidence in the capacity of the Chief of Police and Deputy Chief to lead the organization. The inspectors further concluded that the “breakdown of the strategic planning process has had a profoundly negative impact throughout the police service.” It was recommended in the Report that a facilitator be retained by the Board.

Chief Shaver wrote to the inspectors who prepared the 1993 Report. He stated that the Cornwall Police Service had “a cancerous rot in which the service eats itself from the inside.” He stated that there were “repeated internal attempts of coups” and said that prior attacks had been made on other senior members of the police force that were “personal, brutal, and most times, without solid foundation.” He discussed problems with the Board as well as the Mayor’s behaviour

and referred to problems within the Cornwall community. He stated that “morale in this entire community is poor, and to single out the Police is a most unfair focus.” Chief Shaver further wrote that the “Cornwall Police Association Executive attempts to control or dictate by threats, rumour or over actions, must be challenged and exposed.”

Staff Sergeant Derochie agreed that in 1993, tension existed between senior management and the Cornwall Police Association and that levels of discontent had reached a critical point.

Deputy Chief St. Denis responded to the 1993 Inspection Report. He described the auditors as “adversaries” and stated that the inspection did not take a constructive approach:

The inspection is intended to serve the organization’s accountability relationships. Accordingly, while comprehensive audits point to important improvements that can be made, they should not criticize individuals or their specific decisions. If audits were perceived as witch hunts, they would fail to achieve the positive change that is at the core of the comprehensive audit concept.

In this memo to Acting Chief Carl Johnston⁴⁶ in January 1994, Deputy Chief St. Denis wrote that his “decisions and leadership abilities were seriously controlled, curtailed, by-passed, over-ruled or ignored by both the Chief and some Board members. He stated that his role was to keep a “lid on the mutiny” against Chief Shaver. Deputy Chief St. Denis referred to a “serious blow-up” with the Chief at Claude Shaver’s home in September 1991, which he believed had “put the muzzle” on him. Deputy Chief St. Denis said that the police chief by-passed his office from time to time, which caused him concern.

As mentioned, members of the Ottawa Police Service, Brian Skinner and William Blake, conducted a review of the Cornwall Police Service investigation of David Silmsers’ allegations of historical sexual abuse. Deputy Chief St. Denis was interviewed in January 1994. At that time, the Deputy Chief described the atmosphere at the Cornwall Police Service as a “hornet’s nest.” Deputy Chief St. Denis discussed with Superintendent Skinner the desire of senior officers and staff sergeants at the CPS that the police chief resign. Superintendent Skinner thought tension existed between Deputy Chief St. Denis and Chief Shaver. The Deputy Chief believed he had been kept out of the loop in the 1992–1993 Silmsers investigation and that Chief Shaver had not shared information with him on this investigation.

46. Chief Claude Shaver officially retired in early January 1994. The retirement was announced in late 1993.

Deputy Chief St. Denis testified that there had been a big spike in sick leave among officers from 1992 to 1995. He could recall as many as twelve officers on leave at one time from the Cornwall Police Service. He was of the view that low morale can lead to more sick leaves among officers, and in turn sick leave contributes to low morale. Inspector Trew also observed that in the early 1990s, a significant number of CPS officers had become discouraged and the number of officers on sick leave increased.

Anthony Repa became the Chief of Police in August 1995. The following month he commissioned a staffing review report. Chief Repa had concerns about the high number of officers on sick or disability leave.

Further discussion of these problems in the police force follows in the section on the Cornwall Police Services Board.

The Cornwall Police Services Board

Tensions on the Cornwall Police Services Board had an impact on its functioning. Strained relationships existed not only between members of the Board but also between the Chief of Police and Board members. This had an adverse effect on the ability of the Board to discharge its responsibilities as well as on the morale of the police force.

The section begins with an overview of the responsibilities of the Cornwall Police Services Board. It then describes some of the internal problems of the Board. This is followed by a discussion of the lack of policies, training, and protocols on historical sexual assault as well as conflicts of interest, real and perceived, demonstrating that historical sexual assault cases were not given adequate attention or importance by the Cornwall Police Services Board.

The Mandate of the Board

The Cornwall Police Services Board has important responsibilities to discharge pursuant to the *Police Services Act*. Section 31(1) of the *Act* states that the municipal police board “is responsible for the provision of adequate and effective police services in the municipality.”⁴⁷ The duties of the Police Services Board include appointing members of the police force,⁴⁸ determining objectives and priorities of police services in the municipality in consultation with the Chief of Police, and establishing policies for the effective management of the police force. The Board is also responsible for recruiting and appointing the Chief and

47. R.S.O. 1990, c. P.15.

48. *Police Services Act*, 31(1)(a).

Deputy Chief of Police, as well as directing the Chief of Police and monitoring his or her performance.⁴⁹

The *Police Services Act* required that a Police Services Board be composed of the head of the municipal council, one member appointed by resolution of the municipal council, and three members appointed by the Lieutenant-Governor in Council.⁵⁰ In 1997, the *Police Services Act* was amended such that three members were appointed by the municipality and two by the Lieutenant-Governor in Council.⁵¹

The *Police Services Act* makes it clear that the “board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.”⁵² Moreover, the statute states that the Board is not permitted to give orders to members of the police force other than the Chief of Police.⁵³ The interface of Board members with the police service takes place through the Chief of Police.

As Mayor of Cornwall, Ron Martelle was a member of the Cornwall Police Services Board from 1992 to January 1994. He became a member of the Board again in January 1995. Leo Courville, a criminal and civil lawyer, joined the Board in 1992 and became its Chair in 1993. Angelo Towndale of the Children’s Aid Society was also a member of the Board, from 1991 to 1995. He rejoined the Board in 1998. In the late 1980s, members of the Board included Ron Adams, who was Chair, as well as Mayor Phil Poirier. Members of the Board in 1986 included Mayor Brian Lynch, and the Chair was Bryson Comrie.

A responsibility of the Police Services Board is to prepare the budget for the police service. The budget has a direct effect on the operational aspects of policing. It has an impact on issues such as the number of police officers on staff, the training available for officers, and the quality and quantity of equipment available to the police service. Leo Courville explained that when he was Chair of the Cornwall Police Services Board from 1993 to 1996, the Chief of Police would present him with a “wish list” and then the two of them would review the list and make changes to ensure the proposed budget “accommodate[d] the financial needs of the municipality.” The budget was then presented to the municipal council for approval. The following section discusses the concern expressed by witnesses that there was an inadequate number of Cornwall police officers, which had an effect on the attention given to sexual assault investigations generally and to historical sexual assault cases in particular.

49. *Police Services Act*, s. 31(1).

50. See s. 27(5).

51. S. 27(5), 1997, c. 8, s. 19(1).

52. S. 31(4).

53. S. 31(3).

Adequacy of Staffing at the CPS

Understaffing was a recurring theme in the testimony of members of the Cornwall Police Service.

Ontario Police Commission inspection reports in the 1980s noted some issues of understaffing. The 1984 Inspection Report, for example, mentioned that the force required four additional constables, according to the Chief of Police. The Report further stated that a “re-assessment of civilians is contemplated” and that an “adequacy [s]tudy has been recommended to the Board of Commissioners of Police.” Problems of understaffing were raised in the 1989 Ontario Police Commission Inspection Report, and it was recommended that the Board request an Ontario Police Commission workload study. The 1991 Inspection Report indicated that two phases of the workload study had been completed and that the results would be discussed with the Chief of Police and the Police Services Board. However, a notation in a 1993 Human Resources Management Inspection Report by the Ministry of the Solicitor General, Ontario Policing Services Division, said that the “workload study needs further review.” Leo Courville, who chaired the Board from 1993 to 1996, had no recollection of seeing or reviewing the completed workload study.

The results of the recommended workload study may have shed some light on a conundrum facing the Cornwall Police Service (CPS) and the Board in the early 1990s. While statistics presented to the Board during this period indicated that the authorized staffing levels of the CPS compared favourably with police services of other communities of comparable size, Cornwall police officers throughout the force believed that the service was understaffed.

A possible explanation for the apparent disconnect between the statistics and the CPS officers’ sense that the service was understaffed is that the statistics provided to the Board did not reflect the high number of Cornwall police officers on sick or disability leave during the 1990s. A 1995 Staffing Review Report commissioned by Chief Anthony Repa found that there were three sergeants on long-term disability/worker compensation/sick leave, six constables on permanent disability, one constable on sick leave, and one constable assigned to a regional task force. That is, eleven out of about fifty sergeants and field constables, over 20 percent, were not available for deployment. Chief Repa indicated that in his opinion this number was unusually high. He further stated that there were officers who were at work but due to injuries or health issues were unable to perform their functions as police officers. Leo Courville thought that the number of individuals on sick and disability leave created a burden on the officers working at the Cornwall Police Service.

Reorganizing the staff and their respective duties could have increased efficiency at the CPS. As early as 1978, an Ontario Police Commission Inspection Report stated that:

police officers are being used as radio dispatchers. If it is accepted the services of a police officer, who is a highly paid specialist, should not be used in a function that does not require his knowledge or experience, then these officers could be replaced by civilians.

It is also noteworthy that the 1990 Morale Report commented that dispatch and communications duties tied up the time of too many police officers. The Morale Report pointed out areas in which there was job duplication and made suggestions regarding positions and tasks that could be modified in order to avoid such redundancy. Three years later, the 1993 Human Resources Management Inspection Report recommended that the “organizational structure of the Cornwall Police Service should be revised, to reduce duplication.” Yet Chief Repa testified that when he became the Chief of Police in 1995, police officers were “still being deployed in the radio room and as court security and escort officers, rather than doing police work.”

Failure to Prioritize the Investigation of Sexual Assaults

Information conveyed in the CPS corporate presentations indicated that the rate of sexual assaults in Cornwall was above the national and provincial averages through much of the 1990s. However, during this period, the number of officers working in the Criminal Investigation Bureau (CIB) fell from eighteen in 1990 to twelve in 1993, and increased only to thirteen officers in 1995. Moreover, the Youth Bureau, the sub-unit of the CIB that took over responsibility for the investigation of sexual assaults in the mid-1990s, consisted at times of only two officers in the 1990s. Because of this low staffing level, leaves of absence, and the prioritization of the investigation of other offences over the investigation of sexual assault, at times there was only one officer responsible for the investigation of sexual assaults. When the Youth Bureau officially became the Sexual Assault and Child Abuse Unit (SACA) in 2000, the number of officers was increased to five. As mentioned, this increase was attributed to the rise in the number of complaints received by the Cornwall Police Service as a result of Project Truth, the OPP investigation into allegations of sexual abuse of young males by a group of influential citizens in Cornwall.

The lack of a sufficient number of officers in the CIB in the 1990s had a particularly negative impact on sexual assault investigations. Staff Sergeant Luc Brunet testified that when he became the Officer in Charge of the CIB in 1993, the high number of occurrences and lack of human resources made it impossible to investigate all occurrences in a timely manner. As a result, choices had to be made to prioritize particular offences. He stated that homicides were given top priority and that other crimes were sometimes given priority over sexual assault investigations.

For several months in 1993, Constable Heidi Sebalj, a fairly new and relatively inexperienced police officer who lacked training in sexual assault investigations, was the sole officer in the Youth Bureau. Constable Kevin Malloy, who had been in the Youth Bureau, was on leave as he was injured. Sergeant Ron Lefebvre had been transferred to the Youth Bureau to work on sexual crimes in May 1993, but two weeks after his transfer he was reassigned to act as a secondary officer in a homicide investigation. He was to be transferred back to the Youth Bureau, but this did not occur for a number of reasons. He assumed Staff Sergeant Brunet's responsibilities when the officer was on annual leave. Sergeant Lefebvre then went on his own annual leave, attended a two-week training course, and in the fall was assigned to work on a variety of major crimes, including an aggravated assault, a bombing, and a bank robbery. As Staff Sergeant Brunet testified, the Youth Bureau had a backlog of sexual assault investigations and Constable Sebalj could not keep up.

Although Staff Sergeant Brunet reassigned some of the sexual assault files to general investigators, the backlog remained. In November 1993, Staff Sergeant Brunet wrote a memorandum to Deputy Chief Joseph St. Denis, recommending that an additional officer be assigned immediately to the Youth Bureau to assist with the backlog. The 1995 CPS Staffing Review Report revealed that nearly two years later, a significant backlog of sexual assault investigations remained. The Report stated that there were two constables in the Youth Bureau at the time, Constables Heidi Sebalj and David Bough, and it discussed the backlog of cases: "Very limited proactive work being done. Sexual assaults (approximately 57 cases behind)."

At about the same time as this Report was released, Staff Sergeant Brunet made another request for assistance to clear up the backlog of sexual assault cases. Constables Scott Hanton and René Desrosiers were assigned to the Youth Bureau for approximately four months to assist with the backlog. As discussed earlier, Constable Hanton was assigned the investigation of the historical sexual assault allegations against Earl Landry Jr. Although Constable Hanton was a fifteen-year veteran of the force, his experience was in uniform patrol; he had no experience in the investigation of historical sexual assault. Similarly, Constable Desrosiers at the time of his assignment in 1995 had no such training.

As mentioned, the Board is responsible pursuant to the *Police Services Act* for setting the priorities for the police force. Deputy Chief Danny Aikman stated that to his knowledge, the investigation of sexual offences has never been one of the priorities set by the Cornwall Police Services Board. Other officers, such as Staff Sergeant Garry Derochie, also observed that historical sexual abuse cases were not allocated the same importance as other crimes. The detailed description of such investigations in the preceding sections also confirms that historical sexual assault cases were not given adequate resources and were not conducted in a timely manner.

In my view, the Cornwall Police Services Board failed to establish policies or give direction to the Chief of the Cornwall Police Service that would have ensured that investigations into allegations of historical sexual abuse were assigned high priority and were conducted in a timely manner. It is clear that the investigation of other offences was prioritized over historical sexual assault cases. The Youth Bureau required additional staff and there was a backlog of sexual assault investigations.

It is my recommendation that the Cornwall Police Services Board take measures to ensure that such offences are given priority. Moreover, the Cornwall Police Services Board should ensure that the force has the necessary resources, such as the requisite number of officers to conduct such investigations of sexual assault, and in particular historical sexual assault cases, in a timely manner.

Lack of Protocols on Sexual Assault

The Board's failure to make the investigation of sexual assault a priority is reflected in the late adoption of a CPS internal procedure regarding the investigation of such cases. Charts contained in the CPS corporate presentation indicate that there was an overall upward trend in the number of reported sexual assaults from the early 1980s to the mid-1990s and that sexual assaults constituted a significant portion, ranging from 6 to 21 percent, of the violent crimes reported in Cornwall each year in the 1980s and 1990s. In twelve of those years, the figures were in the double digits. The Board should have been aware of the prevalence of reported sexual assaults either through briefings by the Chief of Police or through annual reports.

The Board should have also been cognizant of the special requirements surrounding victims of child sexual assault. Deputy Chief Aikman testified that the CPS and Children's Aid Society (CAS) were involved in conducting joint interviews of child victims of sexual abuse as early as the 1980s. The child sexual abuse protocol, a multi-agency protocol dedicated to child sexual abuse for the United Counties of Stormont, Dundas & Glengarry, was signed in 1992. However, Directive 114, the first Cornwall Police Service directive dealing with the investigation of sexual assault, including child sexual assault, did not come into force until 1998. Directive 114 mentioned historical sexual assault, but it did not set out any particular procedure to be followed with regard to complaints of historical sexual abuse.

As discussed earlier in this chapter, Staff Sergeant Derochie prepared a report in December 1999 for Chief Repa on the Earl Landry Jr. investigation, delineating the reasons for lengthy delays in historical sexual assault cases. In this report, Staff Sergeant Derochie wrote that "historical sexual assaults were/are not pursued with the same type of urgency which recently occurring assaults were/are given."

He stated that shortcomings similar to the ones that existed in the Landry Jr. case had also been identified in other historical sexual assault investigations conducted by the CPS.

In response, Chief Repa issued Standing Order 003-99 that year, which stated that historical sexual assaults were to be given the same consideration as those incidents that have recently occurred. However, this order was in effect for only one year before it was superseded in December 2000 by General Order FOB-037, which did not mention historical sexual assault investigations. In 2005, General Order FOB-096 again stated that historical sexual assaults should be given the “same consideration as these incidents which have just recently occurred.”

Deputy Chief Aikman acknowledged in his testimony that there were still no CPS documents that specifically set out the manner in which historical child sexual abuse investigations should be conducted. In my view, a detailed protocol should be developed on historical sexual assault investigations, to guide officers who are involved in these cases.

The lack of guidance regarding the manner in which to conduct historical sexual assault investigations has left many officers uncertain as to the steps that they ought to take in such cases. For example, a number of Cornwall police officers testified that they did not know the circumstances under which they are required to report allegations of historical child sexual abuse to the CAS. This is a significant problem. Police officers investigating child sexual abuse cases should have had a clear understanding of the statutory obligation to report a reasonable suspicion of child abuse⁵⁴ to the CAS. It is necessary to ensure that children at risk of abuse are protected.

When Mr. Courville was asked whether the Board had been approached with respect to providing guidance or developing a policy to address the uncertainty regarding whether officers are required to disclose historical sexual abuse to the CAS, he responded that the Board had discussed the issue but that no procedure or policy had been developed.

Lack of Training in the Investigation of Sexual Assault

Through its mandate to determine objectives and priorities of the police service in the municipality and through the budget, the Cornwall Police Services Board has an impact on the training of officers.

The Cornwall Police Service for many years has relied mainly on the Ontario Police College (OPC) in Aylmer for its training. Training in sexual assault offences has been available at the OPC since 1984.

54. *Child & Family Services Act*, R.S.O. 1990, c. 11, s. 72.

Despite the availability of these courses, many Cornwall Police Service officers, even those who had worked on sexual assault investigations, had not received training in the investigation of sexual assault. The 1994 Skinner Report, for example, found that CPS officers involved in the David Silmsen case “lacked the proper background and training” and consequently, “were placed in positions for which they were ill-suited and unqualified.” The investigations examined in this chapter demonstrate that many police officers assigned to such investigations also lacked training on sexual assault and historical sexual assault.

Deputy Chief Aikman testified that the Cornwall Police Service sent about ten officers each year to the Ontario Police College to take courses above the level of basic constable training, and of these, one or two would take training in sexual assault or child abuse cases.

One reason put forth to explain lack of training was that reliance on the OPC meant that the Cornwall Police Service had no control over when and how often courses were offered and whether its officers were able to attend particular courses. All courses were taught at the Ontario Police College in Aylmer until the mid- to late 1990s, at which time satellite courses were offered, which increased the frequency with which particular courses could be offered. There were caps on how many officers could attend each course, and course allocations were based on the relative size of each police service. If the Cornwall Police Service was encountering a lack of availability of spots in courses on the investigation of sexual assault, this issue should have been examined by the Board to determine if there were alternative methods to ensure that the CPS officers received adequate training in this area.

Another reason put forth for the lack of training was budget restrictions. Former police chief Claude Shaver claimed that approximately 90 to 92 percent of the budget for the CPS was designated for salaries, which at the time were among the highest in the province. He said that only 8 to 10 percent of the budget remained for training and other needs of the service. Claude Shaver testified that he “always insisted that training should never be cut and in the end, we end up having to cut training to get to a number that the Board can accept to bring to City Council.” Mr. Courville confirmed that approximately 90 percent of the budget was allocated to salaries.

If attending training at the OPC was not serving the needs of the force at the time, the Board and Chief of Police should have found other ways to ensure that Cornwall Police Service officers were adequately trained. One possible alternative to sending officers to the OPC would have been to provide in-house training. In fact, the Cornwall Police Service had employed an in-house trainer from the mid- to late 1980s. However, he did not provide training on the investigation of sexual assault. After this individual left, there was very little in-house

training for Cornwall officers. The 1990 Inspection Report and the 1990 Morale Report both recommended that in-house training be re-implemented. The Inspection Report stated:

While in-service training cannot replace training available through provincial and federal police colleges, it is the least expensive method of delivery and *is critical if officers are to remain current with emerging issues. A comprehensive in-service training program is vital to both the ability of the Service to provide effective policing, as well as to the morale and motivation of officers.* (Emphasis added)

Therefore, the availability of in-service training on the investigation of sexual assault could have offered a cost-effective method of ensuring that Cornwall officers received the necessary training in this area.

Another option would have been for the Cornwall Police Service to partner with other police forces to host courses in sexual assault investigations. Staff Sergeant Brunet testified that the CPS did this in 1997 in order to offer an interviewing seminar. He said that at that time financial restrictions made it difficult to send officers to the Ontario Police College. As a result, the Cornwall Police Service asked the OPC to send an instructor to provide training to CPS and OPP police officers in Cornwall.

Another training method is the joint training of police officers with staff from other agencies involved with sexual abuse such as the CAS. This method was implemented in the early 1990s. The Institute for the Prevention of Child Abuse (IPCA), a non-profit charitable organization, was established in 1987. It offered joint child abuse training to police officers and CAS workers. The training offered by IPCA was highly regarded. However, IPCA's funding was cut in 1994, and by 1995 it was no longer in existence. Professor Nicholas Bala, who gave expert testimony at the Inquiry, stated that the closing of IPCA left a void in training that does not seem to have been filled since.

In 1996, the Ontario Association of Children's Aid Societies and the Ontario Police College developed a joint protocol for training and began to offer a course on investigating sexual offences against children. Classes were composed of an equal distribution of police officers and CAS workers. However, in 2003, the OPC and the Ontario Association of Children's Aid Societies decided to suspend this course. The OPC no longer operates joint training for police officers and CAS workers.

Experts in the field of child sexual abuse, police officers, individuals who work with the CAS, and the OPC staff discussed in their evidence the importance of joint training. In my view, it is of great importance that joint training of

the police with the Children's Aid Society and other agencies involved in sexual abuse be reintroduced. Moreover, training for police investigation of child sexual assaults, including training on historical child abuse, should be mandatory for all police officers as part of their basic training. It is also my recommendation that officers involved in sexual abuse investigations be required to take refresher courses on an ongoing basis.

Tension Among Board Members

Another problem at the Cornwall Police Services Board that clearly had an impact on its operation was the internal dissension among Board members. Leo Courville testified that during the time he was the Vice-Chair and Chair of the Cornwall Police Services Board, it was "under a great deal of stress" and was "tension-filled." Mr. Courville stated that the presence of Mayor Ron Martelle on the Board was a major source of this strain. Leo Courville claimed that Mayor Martelle refused to adhere to Board policies. He said that Mayor Martelle referred to himself as the "chief magistrate" and took the position that he had the authority to be involved in the operational sphere of policing. Angelo Towndale, another Board member and an employee of the Children's Aid Society, said that Mayor Martelle believed the municipal appointees on the Board ought to hold the balance of power over the provincial appointees. This created tension between Mayor Martelle and the Board members. Mr. Towndale also mentioned that Mayor Martelle opposed employment equity. Chief Shaver said that Mayor Martelle "rejected everything," including the strategic planning process that he was trying to develop in the early 1990s. In a 1993 letter to the Policing Services Division of the Ministry of the Solicitor General, Chief Shaver wrote that the Board "never functioned with a high degree of effectiveness because of the severe personality conflicts and in-fighting, [which] left a tremendous void in the governing of the Service." The conflicts between Mr. Courville and Mayor Martelle were public knowledge, and were even the subject of media coverage.

These tensions on the Board were observed by inspectors in 1993. In that year, Mr. Courville asked the Policing Services Division to conduct an inspection of the Cornwall Police Service. As mentioned, Leo Courville said that he requested this inspection in order to put the Cornwall Police Service in a position where its direction could be identified and its progress monitored. Angelo Towndale testified that the inspection was prompted by the concerns of the Cornwall Police Association regarding Chief Shaver's fluctuating priorities and absenteeism.

In the 1993 Inspection Report, the following comments were made regarding Mayor Martelle's behaviour:

The Mayor's actions have included disregarding the authority of the Board to make decisions, confronting the Chair, threatening to cut off

Board funding, disrupting/walking out of meetings and issuing public statements which have not been sanctioned by the Board. In some instances, these statements appear to have violated the confidentiality of *in camera* sessions.

The Inspection Report further stated that interpersonal conflicts were damaging to the Board's credibility and effectiveness and that the "lack of cohesiveness that exists among board members is common knowledge and has contributed to morale problems within the police service." In other words, inspectors observed that the tension among Board members was having a negative effect not only on the functioning of the Board but also on members of the Cornwall Police Service. In fact, it was recommended in the Report that the "Mayor should be replaced by a municipal representative who has the ability to function on a team working for the betterment of local policing."

Mayor Martelle resigned briefly from the Cornwall Police Services Board in January 1994, but he rejoined one year later, in January 1995 following his re-election as mayor at the end of 1994. At this time, Acting Chief Carl Johnston and three members of the Board—Angelo Towndale, Leo Courville, and Delores Jensen—travelled to Toronto to express their concerns to the Solicitor General about the return of Mayor Martelle to the Cornwall Police Services Board. Solicitor General David Christopherson met with Leo Courville and Acting Chief Johnston.

The Solicitor General informed the Board members that under the *Police Services Act*, the Mayor, as head of the municipal council, was entitled to sit on the Board and could be removed only if after a hearing he was found guilty of misconduct or was found not to be performing or to be incapable of performing his duties in a satisfactory manner.

The Solicitor General, however, was concerned about the effect the continued tension on the Cornwall Police Services Board was having on the delivery of police services to the City of Cornwall. In April 1995, Mr. Christopherson wrote to the Chair of the Ontario Civilian Commission on Police Services, Murray Chitra, to ask that his organization conduct an investigation of the Board to evaluate whether it was performing its proper governance function. The Solicitor General wrote:

Continuing public discussion indicates that there are serious problems with the Cornwall Police Services Board. As you are aware, there is a previous report resulting from an inspection conducted by Police Service Advisors, and the Board has been implementing the various recommendations made. Nonetheless, *it appears that difficulties continue and that the relationships between board members may be so strained that the delivery of police services to the community may be compromised.* (Emphasis added)

The Report of the Ontario Civilian Commission on Police Services was released in July 1995. It stated that Mayor Martelle opposed employment equity, disagreed with the process by which Board members were selected, and stated that he did not recognize the jurisdiction of the Board. It mentioned that Mayor Martelle had threatened to cut off funding to the Board and had released letters exchanged between himself and Mr. Courville to the media, which provoked allegations of breach of confidentiality. The Report also stated that Mayor Martelle had made comments that he was planning to explore the possibility of having police services in Cornwall provided by the Ontario Provincial Police rather than the CPS and had issued statements regarding police services that were not sanctioned by the Board. While the investigators expressed concern respecting Mayor Martelle's "needlessly confrontational approach and the tension it has generated," they found that none of the behaviour described constituted "misconduct."

The Report was critical that disagreements among Board members had been communicated to the media:

It is evident that the Board has experienced periods of heated debate on a range of issues, largely going to matters of control. These have been fuelled by a series of public statements, interviews and press releases from individual members, which frankly appear to have served no constructive purpose. Certainly, they have done nothing to advance public confidence in the activities of the Board or highlight its accomplishments.

The investigators suggested that disagreements among Board members be confined to internal discussions. They stressed that the appropriate place for debate among Board members was in Board meetings, not in the media. They did state that despite the tensions that existed among Board members, they could find no evidence "to suggest that the delivery of police services to the community [was] compromised."

In his testimony, Mr. Courville agreed that to some extent media coverage of the conflicts between Mayor Martelle and himself had resulted in a bad public perception of the Cornwall Police Services Board. He stated that on one hand this was unfortunate, but on the other, he believed that the public ought to know that Mayor Martelle's actions made it difficult for the Board to discharge its proper governance function.

Tensions Between Chief Shaver and the Cornwall Police Services Board

During Claude Shaver's tenure as Chief of Police of the Cornwall Police Service, there was clearly tension between him and the Cornwall Police Services Board.

It was evident from the inspection reports as well as the testimony that the strained relationship between the police chief and the Board had an impact on the functioning of the CPS as well as the morale of the police officers.

As early as 1989, inspectors observed that Chief Shaver was not notifying the Board of his periods of absence from duty. In the inspection report of the following year, inspectors noticed that the relationship between Mayor Poirier and Claude Shaver was “particularly turbulent” and that the Mayor expressed a “complete lack of confidence in Chief Shaver.” Board members agreed that Chief Shaver was absent too frequently. Claude Shaver was well aware that communication problems existed between him and some members of the Cornwall Police Services Board.

As previously discussed, there was tension between the Board and Chief Shaver regarding the services of management consultant Suzanne McGlashan. The Inspection Report notes that the Cornwall Police Services Board convened a meeting to discuss the Morale Report in March 1990. Members of the Board were surprised when Chief Shaver announced at the meeting that he had engaged the services of management consultant Ms McGlashan to address the internal problems of the police service. She had been hired to develop a strategic plan for the force. Members of the Board, according to the Inspection Report, were in agreement with the concept of employing a management consultant to address these issues but were annoyed that they had not been previously consulted. When he testified, Claude Shaver claimed that he had engaged Ms McGlashan with the approval of the Chair of the Board. Nonetheless, Claude Shaver agreed that in hindsight, it would have been prudent to have the support of the full Board before engaging the services of Ms McGlashan.

According to the Inspection Report, on December 14, 1990, arrangements had been made for Ms McGlashan’s ongoing involvement in the strategic planning process. The inspectors wrote that “the engagement of a management consultant would have been the first recommendation in this report had it not been accomplished prior to the inspection.” Claude Shaver testified that the Cornwall Police Services Board decided not to allocate a budget for Ms McGlashan, a decision with which he totally disagreed.

As mentioned, Chief Shaver prepared a draft strategic plan with the assistance of Staff Sergeant Rick Carter after Ms McGlashan was no longer involved with the Cornwall Police Service. Chief Shaver stated that he had tried to present the plan to the Cornwall Police Services Board in March 1993. According to Chief Shaver, the Board rejected it. He said that Mayor Martelle objected to the plan because in his opinion it should have been prepared by the Board. Angelo Towndale recalled the strategic plan presented by Chief Shaver but stated that a discussion about it was delayed until the May 1993 meeting. At that time, concerns regarding Chief Shaver were raised. As a result, an inspection

of the CPS was scheduled and the Board decided to delay its decision on the draft strategic plan.

The 1993 Inspection Report conducted by the Policing Services Division stated that the Chair of the Board had “serious concerns about management, the relationship among stakeholders and morale.” As stated earlier, Leo Courville testified that he had asked for this inspection in order to put the Cornwall Police Service in a position whereby its progress could be monitored. Angelo Towndale explained that the inspection was prompted by concerns of the Cornwall Police Association regarding Chief Shaver’s changing priorities and his periods of absence from the service. In a 1993 memo to the inspectors, Chief Shaver wrote that “the present Board is the most dysfunctional and ineffective I have dealt with.”

As previously mentioned, Claude Shaver decided to retire from his position as Cornwall’s police chief in 1993. His retirement was officially announced in late 1993. However, unbeknownst to members of the Cornwall Police Services Board, Mayor Martelle had been negotiating a severance package with Chief Shaver in the spring of 1993, in March or April. This did not come to the attention of Leo Courville and other Board members until June. In September 1993, the Board began negotiating an early retirement package with Chief Shaver. The agreement was signed in November 1993 by the Chief, Leo Courville on behalf of the Board, and Mayor Martelle for the City.

Lack of Policies on Conflicts of Interest

It is apparent from my review of the investigations of cases of allegations of historical sexual abuse that the Cornwall Police Services Board failed to establish policies and failed to give direction to the Chief of Police regarding conflicts of interest. It was incumbent on the Board to develop such policies to ensure that conflicts of interest were identified and appropriately managed within the context of these investigations. As discussed earlier, the issue arose in the context of investigations such as Earl Landry Jr., the son of former police chief Earl Landry Sr. Chief Shaver and officers working on the Landry Jr. investigation should have had a conflict of interest policy that delineated inappropriate conduct with regard to perceived and actual conflicts of interest. The policy should have also stipulated that police officers who were members of the Board of the Children’s Aid Society could not be involved in CPS investigations involving that agency.

It is also evident that outside police forces should have conducted reviews of CPS investigations of historical sexual assault in which there were allegations of improprieties or problems. This should also have been addressed in the conflict of interest policy. Moreover, Staff Sergeant Garry Derochie testified that the decision regarding when an investigation involving a Cornwall officer should

be performed internally and when it should be assigned to an outside agency is made by the police chief and that no guidelines exist as to how this decision is to be made. Again, guidelines or a policy should exist on such issues. It is my recommendation that the Cornwall Police Services Board develop a conflict of interest policy in the context of investigations relating to allegations of sexual assault, including historical sexual abuse, to ensure that such conflicts are identified and appropriately managed.

Other potential conflicts of interest arose that involved members of the Cornwall Police Services Board. The fact that Mayor Ron Martelle was a member of the Board and his son was a police officer in the Cornwall Police Service gave rise to a potential conflict of interest. The *Municipal Conflict of Interest Act*⁵⁵ states that if a member of a board has a pecuniary interest in a matter that is the subject of consideration at a board meeting, the member shall disclose his or her interest in the matter and refrain from participating in discussion of the matter, voting on any question in relation to the matter, or attempting to influence the voting on any such question.⁵⁶ The *Act* also states that the pecuniary interest of any child of a member of a board is deemed to be the interest of the member.⁵⁷ This placed Mayor Martelle in a potential conflict of interest with regard to any matters having any bearing, direct or indirect, on his son's financial compensation.

The 1993 Human Resources Management Inspection Report recommended that Mayor Martelle be replaced on the Board. It stated that the inspectors had been provided with documents in which the City's lawyer advised the Mayor that a conflict of interest existed with regard to his son. Nevertheless, according to the Report, the Mayor insisted on remaining on the Board and participating in labour-management discussions and contract negotiations.

A January 1994 *Standard Freeholder* article reported that Mayor Martelle had announced that he was resigning from the Board, in part because the 1993 Report found that he was not a team player. The article further stated: "Mayor Ron Martelle and Ald. Tom Green resigned their seats on the troubled Cornwall Police Services Board Monday ... Martelle agreed that having new people representing the city on the board may create more harmony." Another article in the same newspaper on this date quoted Leo Courville: "I can say without commenting on the report that the mayor does have a conflict of interest (on some issues) because his son is a police officer." As discussed, although Mayor Martelle resigned from the Board in January 1994, he rejoined the Board the following year in January 1995.

55. R.S.O. 1990, c. M.50.

56. S. 5(1).

57. S. 3.

The issue of Mayor Martelle's potential conflict of interest was raised again in the 1995 Ontario Civilian Commission on Police Services Report, on an investigation of the Cornwall Police Services Board. This Report stated that according to the provisions of the *Municipal Conflict of Interest Act*, Mayor Martelle was required to disclose his interest in and withdraw from any discussion or decision making relating to the financial compensation of his son. The Report further stated that the Mayor's potential conflict extended to all normal labour relations matters, including "the negotiation of collective agreements, changes to working conditions and certain promotional and disciplinary decisions."

The 1995 Report cited the *Police Services Act*, which states that if after a hearing, the Ontario Civilian Commission on Police Services decides that "a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member."⁵⁸ The Report indicated that any member who failed to disclose a conflict of interest and participated in decision making contrary to the provisions of the *Municipal Conflict of Interest Act* could be considered guilty of misconduct. However, the Ontario Civilian Commission Report stated, "We have not identified any actions on the part of the Mayor to date which would merit sanctions." The Report stated that Mayor Martelle was precluded from participating in much of the collective bargaining between the Board and the CPS that was scheduled to occur in the near future, which would presumably "diminish his potential effectiveness as a municipal representative to the Board at an important time."

The issue of the Mayor's potential conflict of interest was reported in an October 1995 *Standard Freeholder* article. In this article, Cornwall Police Constable Dan O'Reilly, who was stepping down as President of the Cornwall Police Association, claimed that in a 1992 bargaining session between the Board and the Police Association, Mayor Martelle had said that as long as he was Mayor, no police officer would be laid off. Constable O'Reilly pointed out that at the time, Mayor Martelle's son was at or near the "bottom of the list in terms of seniority" on the police service. Constable O'Reilly was quoted as saying, "Since he refused to assure us that no personnel (including civilian office staff at the police station) would be laid off, it was clear to us that he was willing to lay off civilians in order to save his son's job." It is evident that the presence of Mayor Martelle on the Board also created tension between Cornwall police officers and the Police Services Board.

58. S. 25(5).

Leo Courville, Chair of the Board, also faced controversy regarding potential conflict of interest issues. Mr. Courville was a practising criminal lawyer. A conflict of interest situation could arise if Mr. Courville represented individuals arrested by the Cornwall Police Service while he served as a member of the Board.

In the same October 1995 *Standard Freeholder* article cited above, Constable O'Reilly stated that at a January 1995 meeting with the Police Association executive, Mayor Martelle had said that shortly after he was re-elected in 1994, he had spoken to a bureaucrat in Toronto who said that Mr. Courville was placing himself in a conflict of interest when he defended clients charged by the CPS and would be given an ultimatum "to either give up his law practice or resign from the board." Constable O'Reilly claimed that Mayor Martelle "bragged" that because Mr. Courville could not afford to give up his practice he would have to leave the Board, and with Mr. Courville gone, Mayor Martelle would be in control of the Board. Constable O'Reilly said it was clear that the Police Association was being asked to assist Mayor Martelle in removing Mr. Courville from the Board. Constable O'Reilly said that he told Mayor Martelle he would not make any statement regarding Mr. Courville's potential conflict of interest without mentioning the Mayor's possible conflict of interest and the comments he had made about no police officers being laid off in the 1992 meeting.

The 1995 Report found that if Leo Courville were to represent individuals arrested by the CPS while he was a member of the Board, this could place him in a potential conflict of interest. In March 1994, Mr. Courville agreed to complete any files that involved charges laid by the CPS and not to take on any new cases until his term with the Board ended. The 1995 Report stated this would "substantially diminish the potential for any future difficulty" and thus concluded that Mr. Courville was not incapable of performing his duties "in a satisfactory manner."

The 1995 Report stated that Mr. Courville's situation did not fall under the *Municipal Conflict of Interest Act*. However, it noted that until recently, criminal defence lawyers were not appointed to police services boards and that those lawyers who were appointed were subject to strict guidelines, which had been issued in 1978 by the Solicitor General, the Honourable Roy McMurtry. Mr. Courville testified that he was not aware when he was appointed to the Board in 1992 of any guidelines or directives concerning conflicts of interest of Board members. The 1978 guidelines essentially stated that a lawyer should discontinue his or her local criminal practice while serving as a member of a police services board. The 1995 Report recommended that any future appointments to the Board be made in accordance with these guidelines. It also recommended that all new Board members be advised of the provisions of the *Municipal Conflict of Interest Act*, conflict of interest issues generally, and their legal obligations in this regard.

The 1995 Ontario Civilian Commission Report of the investigation into the Cornwall Police Services Board also mentioned that although police officers were subject to a code of conduct, nothing similar existed for Board members. The Report recommended that the Ministry of the Solicitor General and the Ontario Association of Police Services Boards and all boards across Ontario consider as a high priority the development of such a code. Leo Courville agreed that this recommendation could suggest that it would be appropriate to develop guidelines regarding conflicts of interest for Board members. However, he did not recall the development or implementation of such policies by the Cornwall Police Services Board. It is noteworthy that in 1997, the *Police Services Act* was amended to include the following provision: “A judge, a justice of the peace, a police officer and a person who practises criminal law as a defence counsel may not be a member of a board.”⁵⁹

In my view, the Cornwall Police Services Board should have developed a conflict of interest policy that would have allowed them to address issues of perceived and actual conflict of interest by Board members.

It is also my conclusion from a review of the evidence that the Cornwall Police Services Board failed to secure and make available appropriate resources for the adequate provision of policing services in the investigation of cases of historical sexual assault. The Board also failed to ensure that recommendations made by the Ontario Civilian Commission on Police Services and the Ministry of the Solicitor General in the 1980s and 1990s were implemented in a timely manner, or at all. Moreover, the Board failed to determine objectives and priorities with respect to police services in the municipality, and failed to pursue in a timely manner the strategic planning process recommended by the Ministry of the Solicitor General. Furthermore, the Board failed to establish policies and give directions to the Chief of Police to ensure that (1) investigations into allegations of historical sexual abuse were assigned high priority and were conducted in a timely manner; and (2) conflicts of interest were identified and appropriately managed within the context of investigations relating to allegations of historical sexual abuse.

The Investigations of Richard Hickerson and James Lewis

Like some other perpetrators and alleged perpetrators of child sexual abuse in Cornwall, Richard Hickerson had a career in the priesthood. After a religious education in the United States and Switzerland, Mr. Hickerson was ordained.

59. 1997, c. 8, s. 19(3).

He secured a position in St. Boniface, Manitoba, in 1961 as a chaplain of the Society of Mary. According to a statement made to the Ontario Provincial Police (OPP), Mr. Hickerson admitted to his Bishop in 1963 that he was a homosexual. He said the Bishop told him that although he could not stay in St. Boniface, he would help him to obtain a position as a priest in another diocese. In the police statement, Richard Hickerson acknowledged that in his subsequent position, he became sexually involved with a teenaged altar boy. Although the situation was never investigated, Mr. Hickerson decided to leave the priesthood after the Bishop of the Diocese became aware of his behaviour.

Mr. Hickerson came to the Cornwall area in 1968. He obtained a position with the federal government at Canada Manpower as an employment counsellor. Mr. Hickerson was frequently asked by probation officers in the Cornwall Probation and Parole Office to assist individuals on probation or parole in finding employment.

In Cornwall, Mr. Hickerson became a volunteer assistant with the orchestra at the Académie de Sainte-Croix, École Musica, in the Holy Cross Convent, which was part of the separate school system. C-11 played the violin in this orchestra. C-11 testified that he and other students came to Mr. Hickerson's home for extra music lessons and that Mr. Hickerson soon became his mentor. C-11 alleged that Mr. Hickerson sexually abused him repeatedly for a number of years, beginning when he was about twelve or thirteen years old.

Keith Ouellette was a probationer under the supervision of Cornwall probation officer Ken Seguin. Mr. Ouellette testified that Mr. Seguin required him to see Richard Hickerson at Canada Manpower to obtain a job. Mr. Ouellette stated that Mr. Hickerson sexually molested him over several years, starting when he was nineteen years old.

In a 1998 statement to the OPP, Robert Sheets said he met Mr. Hickerson when he was about fourteen years old. Mr. Hickerson was his older brother's employment counsellor. Mr. Sheets stated that when he was fifteen, he dropped out of school, left home, and was living on the streets. He said that government welfare officials instructed him to go to Canada Manpower to find a job, and as his brother had given him Richard Hickerson's card, he went to Mr. Hickerson's office. He said that Mr. Hickerson told him he was a "special needs person" and assured him that this meant he was a "very special person." Mr. Sheets said it was probably after the second time he went to see Mr. Hickerson at Canada Manpower that the employment counsellor asked him to go to a movie, and he agreed. After the movie, Mr. Hickerson invited Robert Sheets to his house for some food. Mr. Sheets alleged that Mr. Hickerson then sexually molested him. Mr. Sheets said there were about six to eight other acts of abuse, involving touching, masturbation, and attempted oral sex. He stated that all of the sexual abuse occurred

at Mr. Hickerson's home. Mr. Sheets also said that Mr. Hickerson provided him with alcohol and showed him homosexual male pornography at his home. Mr. Hickerson told Robert Sheets that he had formerly been a priest.

As I discuss in Chapter 7, on the institutional response of the Ontario Provincial Police, as part of Project Truth, the OPP in 1997 and 1998 investigated allegations of sexual abuse of young males by a group of influential citizens in Cornwall. OPP officers took statements from C-11, Keith Ouellette, and Robert Sheets regarding their allegations of sexual abuse by Richard Hickerson. On June 11, 1998, the OPP interviewed Mr. Hickerson regarding these allegations of abuse. Mr. Hickerson admitted that he had engaged in sexual improprieties with these three men.

Richard Hickerson committed suicide on June 19, 1998, eight days after he was questioned by the Ontario Provincial Police.

Jamie Marsolais, who also alleged that he had been sexually abused by Richard Hickerson, did not report the abuse until after Mr. Hickerson's death. Mr. Marsolais stated that Mr. Hickerson abused him repeatedly from the time he was about nine years old until he was eleven. Mr. Marsolais also alleged that he had been sexually abused several times by James Lewis, a man who lived at his grandparents' boarding home. He stated that the abuse also began when he was nine years old. Mr. Marsolais thought that Mr. Lewis was nineteen or twenty years old at the time but that he did not appear to have full mental capacity.

Richard Hickerson and James Lewis were friends. Mr. Hickerson would come to the boarding house of Mr. Marsolais' grandparents to find jobs for the boarders. Mr. Hickerson and Mr. Lewis became involved in a sexual relationship.

The Cornwall Police Service (CPS) became involved with the Richard Hickerson case on June 19, 1998, the date of his death. Constable Sherri Murphy arrived at Mr. Hickerson's home and spoke with James Lewis and Joseph Hall, who identified themselves as friends of Richard Hickerson. They explained that Mr. Hickerson was a former priest who had left the priesthood because of sexual abuse. They told the CPS officer that Mr. Hickerson discussed committing suicide after he learned that he was under investigation by the OPP.

Constable Jeff Carroll arrived on the scene. The officer was responsible for investigating the possible suicide of Mr. Hickerson. He contacted his supervisor, Staff Sergeant Luc Brunet, who was the Officer in Charge of the Criminal Investigation Bureau. Staff Sergeant Brunet travelled to the Hickerson home. James Lewis gave the officers access to the house as he had a spare key, and Staff Sergeant Brunet, Constable Murphy, and Constable Carroll entered Mr. Hickerson's residence. The police officers found Mr. Hickerson's body on his bedroom floor. He had a rifle in his arm, had obviously suffered trauma, and showed no signs of life. The coroner pronounced the cause of death a gunshot

wound to the head and issued a search warrant for pertinent information on Mr. Hickerson, including computer information that might include a suicide note or next-of-kin information. Constable Carroll saw numerous pornographic, mainly homosexual, magazines, as well as videos in Mr. Hickerson's home. A video camera was set up near his bed.

Staff Sergeant Brunet was involved with the initial stages of the investigation. He took statements from James Lewis and Joseph Hall, while Constable Carroll recorded information about the body and the interior of Mr. Hickerson's home. James Lewis showed the officers a list that Mr. Hickerson had prepared for him regarding his bank account and belongings. The document stated that Mr. Lewis could do what he wished with Mr. Hickerson's photographs, videotapes, and computer disks. Mr. Lewis stated that Mr. Hickerson had told him that he had previously considered committing suicide when an alleged victim had contacted him demanding money. Constable Carroll did not follow up on this information with respect to this alleged victim.

Constables Murphy and Hart maintained scene security, and Sergeant Pierre Lalonde was the Forensic Identification Officer assigned to the case. Constable Carroll entered a report on the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) on June 20, 1998.

On June 20, 1998, Constable Carroll met James Lewis at the Cornwall police station. They went to the morgue, and Mr. Lewis identified Mr. Hickerson's body. They returned to the police station, where Constable Carroll interviewed Mr. Lewis. Mr. Lewis told the CPS officer that Mr. Hickerson had been depressed and was contemplating suicide after being contacted by OPP Project Truth, about a week earlier. He said Mr. Hickerson had provided him with a list of things to do after his death, which he had given to Staff Sergeant Brunet the previous day. The list mentioned photographs, videos, and computer disks. Mr. Lewis agreed to show these items to Constable Carroll.

On the same day, James Lewis permitted Constables Carroll and White to enter his home. He gave the officers three boxes of floppy disks and some loose diskettes, some of which contained child pornography. Mr. Lewis also gave the CPS officers a binder of papers containing Internet addresses that appeared to be "sexually related," according to Constable Carroll's notes, as well as about twenty magazines containing child pornography and books entitled *Children Who Seduce Men* and *Pederasty: Sex Between Men and Boys*. Mr. Lewis also gave the officers a photo album with Polaroid photographs. He showed the police officers that photos missing from the album were cut up and in his garbage can. Mr. Lewis stated that Mr. Hickerson gave him the photos about a week before he committed suicide. He explained that he cut up the photos because he did not want them to cause Mr. Hickerson to get into further trouble.

On June 22, 1998, Constable Carroll spoke with Inspector Richard Trew, Staff Sergeant Brunet, Sergeant Brian Snyder, and Sergeant Lalonde about the Hickerson investigation, and it was decided that the CPS Constable would retrieve Mr. Hickerson's computer from his home. Because Constable Blake Paquin was unable to hook up the computer at the Cornwall police station, Constables Carroll and Paquin received permission from Staff Sergeant Brunet to return to Mr. Hickerson's home and conduct the computer work at that site. The officers found a large quantity of homosexual pornographic material in Mr. Hickerson's home, including eighty-five videotapes, seven of which were homemade videos featuring Mr. Hickerson and Mr. Lewis engaging in sex. The balance consisted of commercially made homosexual pornographic videos. Constable Carroll also found some notes in the home that suggested Mr. Hickerson had been writing an essay entitled "When a Man of God Has Sex With a Boy."

Mr. Hickerson's computer contained his will, which named Mr. Lewis as the executor of his estate. The computer also contained files with titles such as "Erotic Child and Victorian Parents," "Dirty Sex," "Gay Creed," and various articles on puberty. Computer disks found in Mr. Hickerson's home contained images of child pornography and e-mail messages on the trading of these images and suggestions for other such websites. Constable Carroll testified that he does not think that Mr. Hickerson's e-mail contact list was examined. Constable Carroll's notes from June 22, 1998, indicate that Staff Sergeant Brunet and Inspector Trew were shown samples of the materials found in the residence.

On June 23, 1998, Constable Carroll met with Staff Sergeant Brunet to discuss the day's plans and it was decided that Constable Carroll and Sergeant Lalonde would seize the videos, computer disks, magazines, and photographs found at Mr. Hickerson's residence and bring them to the Cornwall police station for viewing. Sergeant Lalonde found a plastic grocery bag full of cut-up photographs hanging on the doorknob of Mr. Hickerson's bedroom door and informed Constable Carroll of this discovery. Constable Carroll's notes do not mention these additional cut-up photographs, and the CPS officer testified that while he recalled seeing the bag, he does not believe that he searched its contents at the time of discovery. Nor did he recall Sergeant Lalonde showing him the cut-up photographs, and he could not comment on whether they were cut up in the same style as the photographs found in Mr. Lewis' home. Moreover, Constable Carroll's list of items seized from Mr. Hickerson's home does not mention the cut-up photographs in the bag, and given the timing of events as recorded in Constable Carroll's notes and Sergeant Lalonde's supplementary occurrence report, it seems that these photographs were not among the cut-up photographs that were given to Constable Paquin for reassembly on the morning of June 23, 1998. It is unclear from the records what happened to the cut-up photographs found at Mr.

Hickerson's residence. Constable Carroll testified that he believed these photographs were brought to the Cornwall police station and put in the same pile as the ones found at Mr. Lewis' residence.

Constable Carroll's notes indicate that later on June 23, 1998, he attended Mr. Hickerson's residence with James Lewis and informed Mr. Lewis that he had Mr. Hickerson's computer and the material Mr. Lewis had turned over to him. He told Mr. Lewis that some of the material contained child pornography.

Constable Carroll testified that he was involved in viewing the seized videos and that Constable Paquin and OPP Detective Constable Ron Genier pieced together the cut-up photographs. Detective Constable Genier was the lead investigator in the OPP investigation of allegations of sexual abuse made against Richard Hickerson by C-11, Keith Ouellette, and Robert Sheets. It was he and Detective Constable Joe Dupuis who took a cautioned statement from Richard Hickerson on June 11, 1998, eight days before Mr. Hickerson committed suicide. This is discussed in further detail in the chapter on the institutional response of the Ontario Provincial Police. Constable Carroll testified that he did not know why OPP Detective Constable Genier was assisting in viewing and cataloguing the materials found in Mr. Hickerson's and Mr. Lewis' residences. The CPS Constable further stated that there was no information sharing between himself and the OPP Constable regarding their respective investigations and no discussion regarding how the seized materials could relate to the Project Truth investigation.

Constable Carroll testified that piecing together all of the photographs was "a two- or three-day-long jigsaw puzzle project" and that working with the photographs and viewing all of the seized material took "several days." The Constable's notes contain two entries regarding viewing material collected from Mr. Lewis' and Mr. Hickerson's homes. One entry indicated that Constable Carroll spent half an hour viewing material with Constable Paquin and OPP Detective Constable Don Genier on June 23, 1998, before much of the material, including the bag of cut-up photographs, had been seized from Mr. Hickerson's home. The second entry indicated that all material was viewed and catalogued on June 24, 1998, the day after all of the videos, magazines, computer disks, and cut-up photographs had been collected from Mr. Hickerson's home and the day after Constable Carroll's notes indicated that the photographs from Mr. Lewis' home had been given to Constable Paquin for reassembly. When he testified, Constable Carroll admitted that the cut-up photographs received from the two different locations were mixed together for no apparent reason. This no doubt made the officers' task more difficult as they had pieces of two puzzles rather than one.

The reassembled photographs depicted young boys in sexual positions. Constable Carroll estimated that the ages of the boys in the photographs ranged

from seven to eighteen. The CPS officer considered some of the photographs to be child pornography.

On June 30, 1998, Constable Carroll met James Lewis and offered to return to him some of the material seized from Mr. Hickerson's residence, namely eighty-five male pornographic videos, twenty-three male pornographic magazines, and two notebooks containing addresses of pornographic Internet sites. He declined and signed a quit claim. Mr. Lewis was told that these materials would be destroyed.

On July 10, 1998, Constable Carroll met with James Lewis and told him he would be charged with possession of child pornography. After Mr. Lewis spoke to a lawyer by telephone, Constable Carroll interviewed Mr. Lewis. Constable Carroll showed Mr. Lewis the reassembled photographs. Mr. Lewis said Mr. Hickerson had given him these photos about a week before he died. He said the photos had been taken ten to fifteen years earlier, in Mr. Hickerson's home. Mr. Lewis identified his brother and another male in the photographs. However, Constable Carroll did not make any attempts to contact Mr. Lewis' brother.

When Mr. Lewis was asked why he had refrained from cutting up some of the photographs, he replied that he had kept them because he liked the bodies featured in them. When he was asked about a photograph featuring a boy of about eleven or twelve years old, Mr. Lewis said the boy was a willing participant who wanted Mr. Hickerson to take pictures of him.

Constable Carroll showed Mr. Lewis images of children, predominantly young girls, involved in sexual situations that included oral sex and vaginal and anal penetration, which were located in a file on a computer disk with Mr. Lewis' name on it. Mr. Lewis said these images were from the Internet and that Mr. Hickerson had given them to him. Constable Carroll's notes state:

He cannot understand what the problem is as all people in those images are consenting and willing participants. When asked how young children can consent to this he tells me that if I read the books that I seized as well I should know that children are sexual beings also. He tells me all children are sexual creature[s].

When Constable Carroll asked Mr. Lewis if he found the images sexually arousing, Mr. Lewis refused to answer.

At the end of the interview, Mr. Lewis became sullen and said that he understood why Mr. Hickerson had killed himself. When Constable Carroll asked him if he was considering committing suicide, Mr. Lewis would not answer. He said people like Constable Carroll did not understand people like him. The Constable became concerned for Mr. Lewis' well-being, so after Mr. Lewis was released on

charges of possession of child pornography, with the condition that he not have contact with anyone under eighteen years old, he was apprehended under the provisions of the *Mental Health Act*. Mr. Lewis was taken to the Cornwall General Hospital for a psychiatric assessment, where he was admitted for precautionary purposes.

Constable Carroll met with Bill Carriere of the Children's Aid Society, and CAS workers were asked to view the photographs to determine if they could identify the individuals in the pictures. No identifications were made. Constable Carroll did not make any further attempts to identify the young persons in the photographs.

Although during their interview on July 10, 1998, Mr. Lewis mentioned to Constable Carroll that children are sexual beings and are capable of consenting to sexual acts, the officer did not ask Mr. Lewis if he was having sex with children. Constable Carroll did not take steps to investigate this possibility. Constable Carroll did not attempt to obtain a warrant in order to conduct a thorough search of Mr. Lewis' home, nor did he place Mr. Lewis under surveillance or have discussions with Mr. Lewis' neighbours, friends, or family.

Had the Cornwall Police Service taken further steps to investigate James Lewis in 1998, it would probably have learned that Mr. Lewis had sexually abused young people such as Jamie Marsolais. In fact, during his testimony at this Inquiry, Constable Carroll agreed that Mr. Lewis had been forthcoming with the police, and when counsel asked, "Is it possible that had you asked Lewis about his own activities, and about his own sexual activities in particular, that he may have just told you?" Constable Carroll replied, "Yes, he may have." Moreover, there should have been more information sharing between the investigators at the Cornwall Police Service and the Ontario Provincial Police concerning Mr. Hickerson and Mr. Lewis.

On August 13, 1998, the CPS destroyed sixty pounds of pornographic material seized from the homes of Mr. Lewis and Mr. Hickerson. It included pornographic tapes, magazines, and packaging. The only item retained was a personal video that showed the location of Mr. Hickerson's rifle in his bedroom.

James Lewis was acquitted of possession of child pornography. Constable Carroll testified that Mr. Lewis' statement was not admitted at trial.

In 2005, Mr. Lewis was charged by the CPS for abusing Jamie Marsolais. He subsequently pleaded guilty to indecent assault. In addition, Mr. Lewis was arrested in 2004 and pleaded guilty in 2005 to possession of child pornography. When the police searched his home, they found toys, children's music, and children's videos.

No consideration was given by the CPS to the possibility of transferring the Polaroid photographs to the OPP for the Project Truth investigation or to retaining

them for future investigations to be conducted by either the Cornwall police or another police force. It is clear from the evidence that the Cornwall Police Service failed to cause an investigation to be conducted regarding the photographs of young boys found in the home of Richard Hickerson in 1998.

Staff Sergeant Brunet was Constable Carroll's supervisor. In his meetings and consultations with Jeff Carroll, Staff Sergeant Brunet should have ensured that an investigation was pursued with regard to the young children depicted in the photographs found in Richard Hickerson's home.

Investigation of Allegations by Marc Latour of Sexual Abuse by His Elementary School Teacher

On June 19, 2000, forty-one-year-old Marc Latour called the OPP Project Truth hotline. Mr. Latour reported that he had been assaulted when he was in grade 3 by Gilf Greggain, a teacher at St. Peter's Elementary School. He was eight or nine years old at the time. Mr. Latour testified that he had been encouraged by his cousin, Richard Nadeau, to contact the police. That day, Sergeant G. Lefebvre of the Cornwall Police Service (CPS) received a letter from officers at Project Truth informing the Cornwall police of the allegations against Mr. Greggain. Sergeant Lefebvre forwarded the Latour matter to the Sexual Assault and Child Abuse Unit (SACA) for investigation by his police force. Sergeant Lefebvre assigned the case to Constable Jeff Carroll.⁶⁰

On June 23, 2000, Constable Carroll interviewed Marc Latour at the Cornwall police station. The interview was videotaped. Marc Latour stated that he had been abused in grade 3 by Mr. Greggain at St. Peter's Elementary School. He told Constable Carroll that the abuse began when he was placed in detention at the end of the school day. The abuse was initially physical and gradually progressed to sexual abuse. Marc Latour stated that the teacher led him to believe that his mother had given Mr. Greggain permission to perpetrate these acts:

I can remember at the beginning that he would say things that I wasn't doing my work right and you know, he was always blaming me for things. I'd get detentions at first, and then my mother would look into the situation and he'd say I was misbehaving and all sorts of other stuff. After a couple of weeks of that, detentions and everything, then he started beating me. ... [A]t first it would be slaps, and then just progressed and progressed. He used to tell me that: "Your mother gave

60. Jeff Carroll became Acting Sergeant in October 2000 and Sergeant in July 2001.

me permission to discipline you because she can't discipline you and your father's not home" ... I can remember he used to pull down my pants, flip me over his knee and start spanking me. This was after school, of course. It happened right in the classroom. Many times he would degrade me. At the time I was only a kid and I didn't think too much about it, but over his knee there, I could feel something hard all the time. Now I know what it was, he was getting his kicks on this.

Mr. Latour alleged that his teacher touched the private parts of his body. He told Constable Carroll that Mr. Greggain "always had my pants down." Mr. Latour said that Mr. Greggain made threats, which included harming his father. Marc Latour's school grades began to drop.

One afternoon, Marc Latour's father saw his son crying outside the school. Marc told his father that Mr. Greggain had physically hurt him but did not disclose the sexual abuse. As he said to Constable Carroll in the interview, "I never told my dad that he was getting his kicks on me, molesting me, touching me." He stated that his father had confronted Mr. Greggain and that the abuse stopped. But Marc Latour never stopped "believing that [his] mother gave [Mr. Greggain] permission to do this to [him]." He told the officer that this permanently scarred his relationship with his mother, whom Marc Latour said he "hated" and whom over the years he had tried "to hurt"; he wanted to "pay her back" by constantly getting into trouble.

Mr. Latour told Constable Carroll that another teacher at the school, Mrs. Gosselin, came into the classroom during school and confronted Mr. Greggain about the physical abuse. Mr. Latour stated that Mrs. Gosselin had been his teacher in grade 2 and that he was an honours student in her class. Mrs. Gosselin was no longer alive at the time of the police interview. Mr. Latour also told the CPS officer that he had sent a letter to his siblings disclosing the physical abuse but did not mention the sexual acts perpetrated by his teacher.

Marc Latour told Constable Carroll that there were no eyewitnesses to the abusive acts. However, he informed the CPS officer that his friend Dennis Rochon was present when Marc Latour had a conversation with Jules Tyo, a janitor at a school at which Mr. Greggain was a teacher. Mr. Tyo was the brother-in-law of Mr. Rochon. Mr. Latour said that Mr. Tyo made comments suggesting that he knew Mr. Greggain had inappropriate relations with children. Mr. Tyo was unaware at that time that Marc Latour was a victim of Mr. Greggain. Marc Latour told the CPS officer at a later interview where Mr. Tyo lived. But the officer did not ask Marc Latour to help locate his friend Dennis Rochon.

In the June 2000 interview, Mr. Latour also told Constable Carroll that he had recently seen Mr. Greggain walking with handicapped children, accompanied

by women. However, the Constable did not investigate whether Mr. Greggain was employed or involved with an agency or organization that worked with vulnerable people or children with disabilities. Nor did the CPS officer report this matter to the Children's Aid Society. At the hearings, the officer claimed he did not think that he had sufficient information. Constable Carroll told Mr. Latour at the interview that he believed him and arranged to meet him again in early July 2000.

On July 5, 2000, Marc Latour was interviewed again by Constable Carroll. Mr. Latour was not told why a second interview was necessary, nor why it was conducted under oath. Marc Latour again described the physical and sexual abuse committed by his teacher, Mr. Greggain. Constable Carroll encouraged Mr. Latour to provide more details of the sexual abuse, but Mr. Latour said he needed more time. The CPS officer suggested that Mr. Latour speak to a counsellor. Constable Carroll told Mr. Latour that he would not pursue the investigation of Mr. Greggain as he did not have the entire story.

Mr. Latour met with Constable Carroll the following month, on August 2, 2000, to advise him that he was not ready to proceed with the case. The officer told Mr. Latour that he would place the matter in abeyance until such time as Mr. Latour was prepared to pursue it.

In March 2001, Mr. Latour contacted the officer, now Acting Sergeant Carroll, to inform him that he was prepared to reopen the case and provide a full account of the abuse that he had suffered. During the interview, Marc Latour discussed aspects of the sexual abuse not previously disclosed to Sergeant Carroll, including that Mr. Greggain had sodomized him. He also told the police officer that he thought the principal of his elementary school had been aware of the physical abuse. Mr. Latour also mentioned that Mr. Greggain had tried to harm his sister, Joan.

Sergeant Carroll told Mr. Latour that he had received a call from Richard Nadeau two months earlier, requesting an update on the case. The CPS officer made it clear to Mr. Latour that this was his case, not Mr. Nadeau's case.

Sergeant Carroll discussed with Mr. Latour various options for obtaining his school records. The officer thought he needed reasonable grounds to believe an offence had been committed in order to obtain a search warrant for a class list or personnel file of the alleged perpetrator. He believed that he did not have reasonable grounds and that he needed corroborative evidence. He informed Mr. Latour that he would seek an opinion from the Crown regarding this case.

With the complainant's consent, Sergeant Carroll obtained Marc Latour's school records. He confirmed with the school board that Marc Latour had correctly identified the name of his elementary school, his teacher, and that he was in grade 3 when Mr. Greggain taught him. He also learned the name of the principal at that time, Mr. P. Beaudette. The information confirmed that Marc Latour

was also in Mr. Greggain's class in grade 6, as Mr. Latour had previously related in an interview.

Sergeant Carroll did not contact the principal. He claimed that the Mr. Beaudette was not available. He testified that the principal may have been in a long-term care facility or have passed away. That was the extent of his recollection. He also stated that Mrs. Gosselin, the teacher from this elementary school, was no longer alive. But Sergeant Carroll did not try to make contact with other teachers who had worked at the school at the time of the alleged abuse.

On April 12, 2002, Sergeant Carroll interviewed Mr. Tyo, who, as mentioned, had been a custodian at the school when Mr. Greggain was a teacher. Mr. Tyo related an incident that he had observed with another custodian, Don Delorme, at St. Columban's West School, an English Catholic elementary school in Cornwall. Mr. Tyo claimed that they had seen Mr. Greggain fondling children at St. Columban's West School. Mr. Tyo further claimed that he had confronted Mr. Greggain in the stairwell about this incident. Mr. Tyo told the officer that in gymnastics class, Mr. Greggain's hands appeared to be on the private body parts of the children. But Sergeant Carroll did not make contact with the school to confirm whether the details conveyed by Mr. Tyo were accurate. Mr. Tyo had signed releases to enable Sergeant Carroll to obtain his employment records, but this also was not pursued by the Cornwall police officer. Sergeant Carroll testified that he had decided not to proceed further with these other allegations because they did not relate to Mr. Latour's complaint. In my view, Sergeant Carroll should have followed up on these matters.

Mr. Latour had previously asked Sergeant Carroll not to disclose his name to Jules Tyo. Yet Mr. Latour subsequently learned from Mr. Tyo that Sergeant Carroll had in fact mentioned Mr. Latour's name to Mr. Tyo. Marc Latour was upset. He confronted the officer about this, who responded that there was simply a communication problem. When Sergeant Carroll testified, he acknowledged that this was "something that I let out of the bag and I believe I eventually apologized to Mr. Latour in the subsequent meeting with him."

On April 15, 2002, Sergeant Carroll spoke with Don Delorme, the custodian at St. Columban's West School, who was also the union representative. Mr. Delorme could not recall witnessing with Mr. Tyo any incident involving Mr. Greggain and students several years earlier. Mr. Delorme questioned Mr. Tyo's credibility and told the CPS officer that Mr. Tyo was always in trouble. He said that Mr. Tyo would often instigate confrontations, that he was dismissed for taking school materials, and that he eventually tendered his resignation instead. Sergeant Carroll testified that after this interview with Mr. Delorme, he had concerns about Mr. Tyo's credibility. But Sergeant Carroll did not confront Mr. Tyo with the statements made by Mr. Delorme in the interview.

Sergeant Carroll interviewed Marc Latour's sister, Joan Latour Dingwall, on May 9, 2002. Joan Latour had also been a student in Mr. Greggain's class in grade 6. She told the CPS officer that Mr. Greggain would take students to hockey games, and she provided the name of one of the students to Sergeant Carroll. Yet the Sergeant did not attempt to locate that student. Joan Latour Dingwall provided the officer with a release to obtain her school records, but he did not pursue this either. Ms Latour Dingwall told the CPS officer that she had destroyed the letter that her brother Marc had sent her regarding the abuse he had suffered. Sergeant Carroll did not approach Marc Latour's other siblings to try to obtain a copy of the letter.

Sergeant Carroll also did not make efforts to locate other students in Marc Latour's class who might have been present when Mrs. Gosselin confronted Mr. Greggain after the beatings.

It was on or about August 8, 2002, that Sergeant Carroll spoke by telephone to the alleged perpetrator, Mr. Greggain, and advised him that serious allegations had been made against him by Marc Latour. An interview took place with Giff Greggain the following day. Mr. Greggain recalled both Marc Latour and his sister, Joan. He told Sergeant Carroll that Marc Latour was a "little devil guy" who had problems in school. Mr. Greggain confirmed that he had taken students to hockey games and that he had taught Marc Latour. Mr. Greggain did not deny that he might have spanked Marc Latour. Mr. Greggain confirmed that Mr. Tyo was a school custodian but denied having a confrontation with him. Sergeant Carroll asked Mr. Greggain if he would be willing to submit to a polygraph test. Mr. Greggain responded that he would speak to his lawyer about this request.

Sergeant Carroll met with Marc Latour on September 5, 2002, to give him an update on the investigation. He told Mr. Latour that Mr. Greggain had denied the allegations and that he was trying to have Mr. Greggain undergo a polygraph test. Sergeant Carroll told Marc Latour that "an admission may be the only thing that could help the case unless another victim came forward." Over three months later, on December 18, 2002, Sergeant Carroll received a call from Mr. Greggain's lawyer, Mr. Markell, who informed him that Mr. Greggain would not submit to a polygraph test. Sergeant Carroll testified that this was the last investigative step he took regarding this case.

Marc Latour again contacted Sergeant Carroll, on January 3, 2003, to obtain an update on the investigation. The CPS officer told him that Mr. Greggain had refused the polygraph test and that Sergeant Carroll believed Marc Latour's allegations of abuse committed by the teacher. Marc Latour told the CPS officer that he wanted Mr. Greggain to be criminally charged. Sergeant Carroll informed Mr. Latour that there were insufficient grounds to lay a charge but that he had

prepared a brief for review by the Crown to obtain further advice. The CPS officer stated that he would give Mr. Latour a definitive answer regarding the laying of charges after he received the Crown's opinion. Sergeant Carroll had a discussion about the case with Crown Attorney Guy Simard that day, and on January 6, 2003, the brief was delivered to the Crown.

Sergeant Carroll recorded in a supplementary occurrence report on February 12, 2003, that he had had a conversation with Crown Attorney Murray MacDonald, who had reviewed the evidence and concluded that there was no reasonable prospect of conviction should charges be laid against Gilf Greggain. This is discussed in further detail in Chapter 11, on the institutional response of the Ministry of the Attorney General.

Sergeant Carroll claimed that following this conversation, he advised both Marc Latour and Mr. Greggain of the Crown's opinion and informed them that the file would be closed. However, the officer did not record this in his notes, and when he testified, he could not provide an explanation as to why he did not make a written record of these calls to Marc Latour and Gilf Greggain. Moreover, Marc Latour testified that he never received a call from Sergeant Carroll advising him of the opinion of the Crown.

Sergeant Carroll acknowledged at the hearings that he was looking for corroboration of Mr. Latour's allegations of abuse. The Cornwall police officer thought that he had nothing more than the statement that Marc Latour was victimized. Sergeant Carroll testified that he wanted something more to confirm Mr. Latour's story: "There [were] more things that I could have done and, again, my focus was on trying to develop some sort of corroboration on what occurred between Mr. Greggain and Mr. Latour." But the CPS officer did not contact other potential witnesses who might have provided the corroboration he believed would strengthen the case. Sergeant Carroll acknowledged that he was preoccupied with several other investigations at the time of the Latour case.

Sergeant Carroll reiterated in his evidence that he found Marc Latour sincere. He also acknowledged that Marc Latour's account of events was consistent throughout the investigation.

Sergeant Carroll admitted that the biggest problem with the Latour investigation was delays. He maintained, however, that he did not think that he had reasonable and probable grounds to lay a criminal charge.

Staff Sergeant Garry Derochie was also involved in the Marc Latour investigation. He received updates on a regular basis from Sergeant Carroll regarding the case. Staff Sergeant Derochie recalled that Sergeant Carroll's explanations for the delays in the Latour case related to the complexity of historical sexual abuse cases, difficulty in finding corroboration, and the fact that Marc Latour was

emotional. Staff Sergeant Derochie acknowledged that when Marc Latour was asked to swear an affidavit at the time he gave his statement to the CPS, this was probably not a normal practice of the police force in a sexual assault investigation. Staff Sergeant Derochie had no recollection of being told by Sergeant Carroll that Marc Latour had seen Mr. Greggain with a group of handicapped children. He stated that Sergeant Carroll should have advised him of this because it suggested that there might be a current risk of abuse to children. It was Staff Sergeant Derochie's view that this historical sexual abuse case did not receive the same degree of urgency as current cases. Staff Sergeant Derochie acknowledged that there were long delays in this case and that Sergeant Carroll was preoccupied at that time with other criminal investigations. As Staff Sergeant Derochie testified:

... [C]ertainly everybody's complaint, whether it be historical or a fresh complaint, is important and they should be dealt with ideally in the same manner. The reality of the situation is it just doesn't happen that way.

...

It didn't happen here ... This was a long delay.

Sergeant Carroll could have assigned the Latour case to one of his investigators if he had been too busy to devote the necessary time to the case.

It is clear from the evidence that Staff Sergeant Derochie and the Cornwall Police Service could have done more to properly supervise Sergeant Carroll during the investigation into allegations of sexual abuse made by Marc Latour against Gilf Greggain. It is also evident that Sergeant Carroll and the Cornwall Police Service failed to conduct a thorough and timely investigation into allegations of historical sexual abuse made against Gilf Greggain by Marc Latour.

Potential witnesses were not interviewed, there were lengthy delays in the investigation, and the Cornwall police did not follow up on information obtained from people who were interviewed. As Staff Sergeant Derochie acknowledged, this case of historical sexual abuse did not receive the same attention as other types of criminal cases at the CPS. This was particularly serious as children in the Cornwall community may have been at risk of sexual abuse by this alleged perpetrator. Marc Latour had told the CPS that he saw Mr. Greggain accompanying children with disabilities. This was another investigation of historical child sexual abuse in which there were excessive delays, lack of follow-up with potential witnesses, and failure to give the case and the alleged victim of child sexual abuse the attention and support they warranted.

Allegations Against Father Charles MacDonald by Albert Lalonde

Albert Lalonde was born in September 1958. When Albert was in grade 5 at St. Columban's West School, he met Father Charles MacDonald and became an altar server at St. Columban's Parish. Albert Lalonde alleged that he had been abused by Father MacDonald. Albert Lalonde initially made these allegations to the Ontario Provincial Police (OPP) in 1995. This is discussed in further detail in the chapters on the institutional response of the Ontario Provincial Police and of the Ministry of the Attorney General.

In 2002, these allegations were brought to the attention of the Cornwall Police Service (CPS). On May 16, 2002, in a telephone call from Richard Nadeau, Sergeant Jeff Carroll became aware of the allegations of abuse made by Albert Lalonde against Father Charles MacDonald. A call had been made by Mr. Nadeau to the CPS the morning after proceedings against Father Charles MacDonald had been stayed by the court. The stay was ordered on May 13, 2002.⁶¹ This was a case involving the OPP in which multiple victims alleged abuse by Father Charles MacDonald.

Richard Nadeau, as mentioned, operated a website known as Project Truth. He alleged that he was himself a victim of abuse. He had contact with Albert Lalonde and other alleged victims of abuse. Mr. Lalonde had apparently sent Mr. Nadeau an e-mail detailing his alleged abuse by Father MacDonald.

Mr. Nadeau informed Sergeant Carroll that Albert Lalonde wanted to file a complaint against Father MacDonald. Sergeant Carroll advised Richard Nadeau that the CPS would investigate the matter if it fell within its jurisdiction. Mr. Nadeau responded that the alleged abuse by the priest occurred at St. Columban's Parish, which was within the jurisdiction of the Cornwall Police Service.

Sergeant Carroll met with Staff Sergeant Garry Derochie and the Deputy Chief regarding this matter on May 16, 2002. Staff Sergeant Derochie told Sergeant Carroll that the CPS would handle this case. As I discussed in detail earlier in this chapter, David Silmsen contacted the Cornwall police in December 1992 and alleged that he had been sexually abused in the past by both Father Charles MacDonald and Ken Seguin. Constable Heidi Sebalj was responsible for the investigation. As described earlier in this chapter, Mr. Silmsen refused to continue with his complaint against Father MacDonald in September 1993 as a result of the financial settlement between himself, the priest, and the Diocese. Criminal charges were not pursued by the CPS against Father MacDonald. Sergeant Carroll was not familiar with the David Silmsen investigation and his allegations of abuse against Father MacDonald.

61. This is discussed later in this Report.

Later that day, Sergeant Carroll received a telephone call from Albert Lalonde. Mr. Lalonde said that Richard Nadeau had advised him to call the CPS.

On May 17, 2002, Albert Lalonde again contacted Sergeant Carroll, to inform him that his brother Marc Lalonde also wanted to meet with the CPS. The two brothers, Albert and Marc, arrived at the Cornwall police station. On that day, Sergeant Carroll took a statement under oath from Albert Lalonde. Mr. Lalonde described three incidents of abuse, two of which fell within the jurisdiction of the Cornwall Police Service and one of which was within the jurisdiction of the Ontario Provincial Police. Mr. Lalonde told Sergeant Carroll that he had reported these allegations to the OPP several years earlier.

Albert Lalonde stated that he first met Father Charles MacDonald when he was in grade 5 at St. Columban's West School and became an altar boy at St. Columban's Parish. Mr. Lalonde described the three incidents of abuse. The first incident of sexual abuse allegedly occurred in the church in Cornwall, when Albert Lalonde was in grade 5, after he had served mass with Father MacDonald. He said that the second incident of sexual abuse took place following a mass during the summer. Father MacDonald drove Albert Lalonde to Centennial Park, located off Avonmore Road, which is where the alleged abuse took place. The third alleged incident of sexual abuse occurred after a wedding at St. Columban's Church in 1971 at which Albert Lalonde had served as an altar boy. Albert Lalonde told Sergeant Carroll that he had previously prepared a handwritten statement, dated April 9, 2002, which had been witnessed by Carson Chisholm on April 26, 2002.

Carson Chisholm is the brother of Helen Dunlop and the brother-in-law of Perry Dunlop. His involvement with the Dunlops and alleged victims of abuse in Cornwall is discussed further in this Report.

Albert Lalonde informed Sergeant Carroll that he had spoken about the incidents of abuse to two doctors, Dr. Ken Richter, a psychiatrist, and Dr. Luc Clement, a family physician. Albert Lalonde was prepared to provide medical releases to the CPS to enable the police to interview the doctors. Mr. Lalonde explained that he could not tell his family physician, Dr. Clement, earlier all the details of the abuse perpetrated by Father MacDonald because "I didn't know it." Albert Lalonde had disclosed to Dr. Clement abuse perpetrated by another man, Raymond St. Jean, a foster child raised by his grandmother.

Albert Lalonde explained to Sergeant Carroll that he had been at home watching television when there was a newscast about Father Charles MacDonald. At that time, he experienced a "flashback" and explained to his wife what had happened to him. He told Sergeant Carroll that he went to see Dr. Richter the following day and began therapy about his flashback.

Albert Lalonde told Sergeant Carroll that he had decided to contact the Long Sault OPP in 1995 to make complaints about both Raymond St. Jean

and Father Charles MacDonald. He gave a statement to the OPP about both these alleged perpetrators. The case against Raymond St. Jean proceeded. Mr. Lalonde stated that he testified at the St. Jean trial. Albert Lalonde thought that the OPP had charged Father Charles MacDonald. The OPP told Albert Lalonde that he was the third victim to come forward. They said that David Silmsen was the first complainant and that he was followed by John MacDonald. Albert Lalonde seemed somewhat uncertain at the time of his interview with Sergeant Carroll as to the status of his case regarding the OPP and Father Charles MacDonald. Albert Lalonde advised Sergeant Carroll that he had spoken to Perry Dunlop, who had put him in contact with John MacDonald and David Silmsen.

Sergeant Carroll met with Staff Sergeant Derochie after he obtained the statement from Albert Lalonde.

A few days later, on May 21, 2002, Sergeant Carroll took a sworn videotaped statement from Richard Nadeau. Sergeant Carroll had some concerns regarding the influence that Mr. Nadeau might have had on Albert Lalonde. Sergeant Carroll asked Richard Nadeau not to release details on his website or deal with the media with respect to the Albert Lalonde allegations. Richard Nadeau informed Sergeant Carroll that he had a statement relevant to this case. Sergeant Carroll asked Mr. Nadeau for a copy of it. After speaking with Richard Nadeau, Sergeant Carroll concluded that he did not appear to have exerted any influence on Albert Lalonde.

In his statement, Richard Nadeau informed Sergeant Carroll about C-4. Mr. Nadeau stated that he did not think that C-4 or his brother would come forward. Sergeant Carroll did not contact C-4 or any of the altar boys mentioned by Albert Lalonde. Sergeant Carroll acknowledged at the hearings that these individuals might have strengthened the case involving Albert Lalonde as they might have corroborated his allegations.

Mr. Nadeau also referred to a hairdresser who might have been abused by Father Charles MacDonald. However, Sergeant Carroll had no recollection when he testified of making any efforts to locate this individual. Richard Nadeau also mentioned a boy who had been taken to the basement of the church by Father MacDonald and allegedly abused. Sergeant Carroll conceded that he did not pursue this lead either.

Sergeant Carroll did not discuss the Silmsen investigation with Constable Sebalj when he was investigating allegations made by Albert Lalonde. Nor did Sergeant Carroll interview Father Charles MacDonald.

On May 23, 2002, Sergeant Carroll met with Albert Lalonde. Mr. Lalonde executed releases to allow the Cornwall police to obtain information from his physicians. The CPS officer obtained releases for Drs. Richter and Clement but not for two other doctors whom Albert had mentioned, psychiatrists Dr. Ahmed

and Dr. Nadler. At the hearings, Sergeant Carroll could not explain why he did not contact these two psychiatrists.

On the same day, Sergeant Carroll contacted Detective Constable Joe Dupuis to obtain information from the OPP on the case. Sergeant Carroll was aware that Raymond St. Jean had been criminally charged and convicted for sexually abusing Albert Lalonde and his brothers. The Sergeant sought information from the OPP on that case, as well as on the 1995 investigation of Father MacDonald regarding Albert Lalonde's complaint.

A meeting took place between the OPP and CPS on May 30, 2002. In attendance were Detective Inspector Pat Hall and Detective Constable Dupuis from the OPP, and Staff Sergeant Derochie and Sergeant Carroll from the CPS. The OPP provided the Cornwall police with Albert Lalonde's statements. These included the April 25, 1995, statement of Albert Lalonde to OPP Detective Constable Norman Hurtubise and the May 12, 1995, statement of Albert Lalonde to OPP Detective Constables Michael Fagan and William Zebruck. Detective Inspector Hall stated that these interview reports had been sent to Crown Attorney Curt Flanagan on August 16, 1995, for a legal opinion and had been disclosed to Father Charles MacDonald's lawyer. He confirmed that no criminal charges had been laid by the OPP with regard to Albert Lalonde's allegations against Father MacDonald.

The package of material from Detective Inspector Hall also included the December 16, 1996, interview of Albert Lalonde by OPP Detective Constable Don Genier regarding an investigation of sexual assault by Marcel Lalonde, as well as the April 25, 1995, interview of Albert Lalonde by Constable Carole Pirnat regarding sexual assault allegations against Raymond St. Jean. Detective Inspector Hall stated that Raymond St. Jean had been arrested on October 5, 1995, and charged with indecent assault and gross indecency by the Long Sault Detachment of the OPP. There were five alleged victims, including Albert Lalonde.

Detective Inspector Hall asked Sergeant Carroll in May 2002 for a copy of his interview with Albert Lalonde, as some of the allegations against Father MacDonald allegedly occurred in the Avonmore area and the OPP intended to investigate the matter.

As mentioned, the information given to the Cornwall police contained the April 1995 interview of Albert Lalonde by OPP Detective Constable Hurtubise. Albert Lalonde had told the OPP that four to six weeks before the interview, he had had flashbacks to an incident with Father Charles MacDonald that had occurred twenty-five years earlier, when he was an altar server. He explained to the OPP that when he heard the allegations against Father MacDonald on television, he had had a flashback of Father MacDonald assaulting him. Albert Lalonde listed a number of altar boys who served at the church at that time.

However, Sergeant Carroll did not ask Albert Lalonde for the names of those other altar boys or try to contact them.

In the statement to the OPP on May 12, 1995, Albert Lalonde described his recovered memory and mentioned that he had told Dr. Richter and Dr. Clement about the abuse. In this OPP statement, Albert Lalonde stated that a news story about the allegations against Father MacDonald and the lawsuit triggered his memory of the abuse. Albert Lalonde was distraught and he cried during the OPP interview.

It was agreed that Sergeant Carroll would interview Dr. Clement and that Detective Constable Dupuis from the OPP would interview Dr. Richter.

On June 25, 2002, Sergeant Carroll interviewed Dr. Clement, Albert's physician. Dr. Clement treated him for stress and depression. He stated that in 1993, Albert Lalonde had a recollection of being abused by a priest. No name was provided. Dr. Clement stated that he had referred Albert Lalonde to Dr. Nadler and Dr. Ahmed. Sergeant Carroll did not contact either of these doctors.

In this interview, Dr. Clement discussed with Sergeant Carroll reports from Drs. Ahmed and Nadler. Albert Lalonde had reported that both he and his brother were abused by Raymond St. Jean and another man, who was not identified. Dr. Clement stated that Dr. Richter had discharged Albert Lalonde as a patient in June 1997.

Sergeant Carroll testified that the fact that Albert Lalonde did not identify Father MacDonald as the alleged perpetrator to either Dr. Clement or Dr. Richter had an impact on his view as to whether there were reasonable grounds to believe that a criminal offence had been committed. Sergeant Carroll thought that the Crown should review the case. Sergeant Carroll also testified that the clinical notes of the physicians indicated that Albert Lalonde was struggling with whether his flashbacks were true. The only person Mr. Lalonde was able to identify was Raymond St. Jean, who had been convicted of abusing him. According to Sergeant Carroll, Dr. Clement did not think that Albert Lalonde was credible. Sergeant Carroll thought that Dr. Clement's opinion would have a serious impact on the success of the case. Nevertheless, Sergeant Carroll conceded that he did not ask Dr. Clement whether he was qualified to give an opinion on psychological matters. Sergeant Carroll knew that Dr. Clement had referred Albert Lalonde to psychiatrist Dr. Ken Richter.

Sergeant Carroll provided a copy of his June 25, 2002, interview with Dr. Clement to the OPP. Albert Lalonde had mentioned to Sergeant Carroll that he had seen four doctors. The only doctor whom Sergeant Carroll interviewed was Dr. Clement.

The notes of Dr. Richter stated that Albert Lalonde had vague recollections of a priest doing something to him. Dr. Richter recorded on April 12, 1995, that

Albert Lalonde was upset by a sudden recollection of a sexual act committed by a priest. In subsequent appointments, Mr. Lalonde repeatedly mentioned that he had been abused by a priest. According to Dr. Richter's note on February 18, 1996, Albert Lalonde stated that he was angry with the priest but did not name him.

On June 18, 2002, Detective Constables Genier and Dupuis interviewed Albert Lalonde regarding his allegations of abuse by Father MacDonald at Centennial Park, off Avonmore Road. In June and July 2002, the two officers interviewed Albert Lalonde's brother Marc Lalonde as well as his ex-wife, Judy Lalonde, and their daughter, Laura.

Sergeant Carroll stated that he kept Staff Sergeant Derochie current on the case.

On July 9, 2002, Sergeant Carroll informed Albert Lalonde of his interview with Dr. Clement and stated that Dr. Richter needed to be interviewed. He also advised Mr. Lalonde that the Crown would be consulted to determine if there were grounds to charge Father MacDonald. On July 16, 2002, Sergeant Carroll spoke to Crown Attorney Lorne McConnery, who advised the Sergeant that he would be handling the case. Mr. McConnery asked Sergeant Carroll to forward the brief to him.

On the same day, OPP Detective Constable Genier interviewed Albert Lalonde's ex-wife, Judy, who stated that Albert had never discussed the abuse until he spoke with a person named John. Sergeant Carroll had previously learned in his interview with Mr. Lalonde that John MacDonald, another alleged victim of Father Charles MacDonald, had been in contact with Mr. Lalonde. Sergeant Carroll testified that he had not been aware of this evidence from Mr. Lalonde's former wife when he sent the brief to Crown Attorney Lorne McConnery.

On July 23, 2002, Sergeant Carroll had a meeting with OPP Detective Constable Dupuis and Staff Sergeant Derochie. The OPP officer provided the clinical notes and records obtained from Dr. Richter.

Sergeant Carroll sent a letter to Lorne McConnery on July 24, 2002, asking for his opinion as to whether or not there were reasonable and probable grounds to charge Father MacDonald. He enclosed the May 17, 2002, statement of Albert Lalonde, a summary of Sergeant Carroll's interview of Dr. Luc Clement, and Dr. Richter's notes. In his correspondence, Sergeant Carroll wrote: "I am seeking your advice on the reasonableness of charging at this time given the longstanding difficulties with respect to identification and offence specifics."

The following day, July 25, 2002, Sergeant Carroll contacted Albert Lalonde. Mr. Lalonde provided a photograph of the wedding at which Father MacDonald had presided and Albert Lalonde had been an altar server. On August 12, 2002, Sergeant Carroll informed Albert Lalonde that he was waiting for the Crown's opinion on this case. On September 6, 2002, the Sergeant made contact with

Crown Attorney Lorne McConnery, who stated that he needed a few more weeks to fully review all the materials. Sergeant Carroll conveyed this information to Mr. Lalonde that day.

On November 15, 2002, more than two months later, Mr. McConnery informed Sergeant Carroll that reasonable and probable grounds were not present and that the likelihood of conviction was non-existent. This was inscribed in Sergeant Carroll's notes and in the supplementary occurrence report in 2002. The Crown's involvement in the Albert Lalonde matter is discussed further in the chapter on the institutional response of the Ministry of the Attorney General.

On January 20, 2003, Staff Sergeant Derochie and Sergeant Carroll reviewed a letter from the Crown dated January 8, 2003, confirming his opinion on the Albert Lalonde complaint. Lorne McConnery wrote that he had reviewed the CPS file as well as the OPP file regarding the Albert Lalonde allegations against Father Charles MacDonald. He mentioned that Sergeant Carroll had expressed to him his concerns regarding whether the offence had been committed. Mr. McConnery wrote that in reviewing the briefs of the CPS and Project Truth, he had concluded that Sergeant Carroll's concerns were "well-founded."

Sergeant Carroll spoke to Albert Lalonde the following day. He informed Mr. Lalonde that there were insufficient grounds to lay a charge. He told Mr. Lalonde that the reasons for the decision included the fact that his identification of Father Charles MacDonald was not made until he saw the news story and that there had been no disclosure for some time while he was undergoing therapy. Staff Sergeant Derochie was advised of the call with Albert Lalonde. This ended Sergeant Carroll's involvement with this file. He informed Mr. Lalonde that he was closing the file.

Sergeant Carroll had concluded that there were no reasonable and probable grounds to lay a charge. He was concerned about Albert Lalonde's credibility. Yet Sergeant Carroll did not consult either the Crown or experts regarding recovered memory syndrome. Sergeant Carroll acknowledged that he had no real evidence that Carson Chisholm had tainted Albert Lalonde's evidence. He also admitted that there was no evidence of tainting by Perry Dunlop.

Sergeant Carroll acknowledged that he did not conduct a full review of the CPS investigation of David Silmser's allegations against Father MacDonald, the same alleged perpetrator. He did not speak to Staff Sergeant Brunet or Constable Sebalj, the officers who were involved in the investigation of the Silmser matter, regarding any possible similarities in the Silmser and Lalonde cases or any other potential witnesses who could have been contacted. Nor did Sergeant Carroll interview Father MacDonald. Sergeant Carroll's investigation did not include a thorough review of all OPP Project Truth files related to Father Charles MacDonald.

It is clear from the evidence that the Cornwall Police Service failed to take proper investigative steps with regard to the allegations of historical child sexual abuse by Albert Lalonde. These would have included identifying further victims of the alleged perpetrator, conducting interviews with other potential witnesses, identifying corroborative evidence, interviewing Mr. Lalonde's psychiatrists, and interviewing the suspect.

The OPP investigation of the allegations of Albert Lalonde and other alleged victims of sexual assault against Father Charles MacDonald will be discussed in Chapter 7, on the institutional response of the Ontario Provincial Police.

Perry Dunlop

The mandate of this Inquiry is to examine the response of public institutions to allegations of the sexual abuse of young people in the Cornwall area. Its focus is on the past actions of institutions and on how these institutions could make improvements for the future.

In this context, Mr. Perry Dunlop has affected both institutional actions and responses. He was an employee of one institution, and reported to another regarding allegations that affected other institutions. His actions became relevant to the Ontario Provincial Police (OPP) investigation, Project Truth, and to related prosecutions. It is within this context of institutional response that I am considering Mr. Dunlop's part in the pattern of actions by and reactions to public institutions.

Mr. Dunlop was validly ordered by the Superior Court of Justice of Ontario to appear at this Inquiry. He refused to do so and served a period of incarceration for contempt of court. This matter is more fully discussed in the chapter on the process of this Inquiry and related appendices in this Report. I did have the opportunity to observe Perry Dunlop when he appeared before me during the examination to determine if he would testify. I have also had the opportunity to review the extensive record of evidence in documentary form and the oral testimony of those who were involved in various capacities with Mr. Dunlop. It clearly would have been preferable to receive Perry Dunlop's testimony before this Inquiry, both to better understand the outline of information provided in his lengthy will-state prepared at the direction of the Cornwall Police Service and in other documents and to ascertain Mr. Dunlop's state of mind at various times and his reasoning for various discussions and actions. In addition, oral testimony permits the testing of evidence through cross-examination, as well as presenting the opportunity to probe new areas of recollection or response to the testimony of other witnesses before this Inquiry.

In making findings in relation to this aspect of institutional response, I have exercised the cautions and disciplines set out in the chapter on the process of this Report related to the use of documentary evidence and evidence untested by cross-examination, applying them as I would to any other individual or institution.

Career History up to 1993

Perry Dunlop was born in Cornwall, Ontario, in 1961. He graduated from Cornwall Collegiate Vocational High School in 1980 and went on to receive an honours diploma from Algonquin College in law and security administration in 1983. He also took courses in criminology at Carleton University.

The Cornwall Police Service (CPS) hired Mr. Dunlop on August 19, 1983. Perry Dunlop attended the Ontario Police College in Aylmer for three months, and then he spent six months on uniformed patrol at the CPS. In early 1984, he attended the Ontario Police College for further training. He never completed any specialized courses on sexual assault or child abuse.

Following his initial training and experience on the job, Mr. Dunlop was appointed to the rank of constable first class effective August 19, 1986. He received additional training in the late 1980s and early 1990s, attending the advanced police training course at the Ontario Police College in 1989, a drug investigative techniques course at the Canadian Police College in 1991, and a course on undercover operations offered at the Ontario Police College in 1991.

Constable Dunlop's assignments in the late 1980s consisted of working as a uniformed patrol officer, which he described as mostly "one man cruiser patrols." In January 1990, Constable Dunlop was given a one-year assignment to the Criminal Investigation Bureau (CIB) of the Cornwall Police Service.

During his new assignment at CIB, Constable Dunlop investigated one sexual assault case. The complainant had been taken to the hospital and Constable Dunlop was the first officer to arrive. Mr. Dunlop indicated that the victim appeared comfortable with him and requested him as the investigator.

In January 1991, Constable Dunlop joined the Drug Unit, a group that worked jointly with the RCMP and the OPP, each force providing members. The work of the Drug Unit took Constable Dunlop outside the City of Cornwall and often outside Ontario. The Drug Unit was disbanded in 1992 and Constable Dunlop returned to his work as a uniformed patrol officer. However, over the next two years or so, the Constable continued to carry responsibility for some drug files initiated while he was in the Drug Unit. Constable Dunlop was also recruited by Sergeant Claude Lortie of the CPS to work undercover at night while maintaining daytime police duties. Fellow officers were unaware of this assignment, which ultimately led to arrests and drug-related charges.

Because of Constable Dunlop's continued involvement in the Drug Unit cases and undercover work, he maintained an office in the CIB after he had formally returned to patrol duty.

Discipline and Evaluation History up to 1993

In September 1985, Constable Dunlop reported that his cruiser was damaged by an unknown driver while parked in a hospital parking lot. An investigation determined that the damage had occurred when the Constable was driving the vehicle and hit a concrete post. It was the investigating officer's opinion that Constable Dunlop knew how the damage occurred and made a false report in order to avoid liability. He was then charged with neglect of duty and deceit, which is considered a major charge under the *Police Act*.⁶²

During their investigation of this charge, Inspector Trew and Staff Sergeant Kirkey of the CPS opened Constable Dunlop's locker to retrieve his notebook. In his locker, they found two pieces of identification with civilian names. Apparently, Constable Dunlop had been instructed in May 1985 to locate the owners of the identification and had not done so by the fall of 1985. As a result, he was also charged with two counts of neglect of duty under the *Police Act*.

Constable Dunlop pleaded guilty to one of the minor offences of neglect of duty relating to one of the pieces of identification and was sentenced to four hours forfeiture of leave. He pleaded not guilty to the other minor count but was found guilty after a full hearing and sentenced to four hours forfeiture of leave.

The major offence related to deceit with respect to the report of vehicle damage was adjourned while Perry Dunlop brought a *Charter* application requesting that the previous convictions be quashed and the charge relating to the major offence be stayed. This application was dismissed. After meeting with representatives from the Cornwall Police Association, who also met with relevant CPS authorities, Constable Dunlop pleaded guilty to a less serious offence of neglect of duty and was sentenced to five days forfeiture of leave. The hearings officer in this case was Staff Inspector Stuart McDonald, who later became Perry Dunlop's brother-in-law.

Constable Dunlop was the subject of a conduct report for unprofessional use of the police radio. He was counselled with respect to this incident in 1986, and evaluation reports recount that he accepted the report and constructive criticism in a positive manner.

Overall, Constable Dunlop received positive and above-average evaluations from his supervisors. He was particularly commended for his team work, community work, his pride and dedication to police work, his self-motivation

62. R.S.O. 1980, c. 381.

and diligence, his keen surveillance and knowledge of his patrol area, and his sense of humour.

Areas that were identified as requiring further development included looking to experienced personnel for direction more often; not allowing “the short comings of the Justice system to effect [sic] his own morale”; and keeping up to date on paperwork, improving report writing, and developing a methodical and detailed approach to investigation, including related paperwork. The issue of morale was raised in 1987.

During his career in policing, Perry Dunlop was involved in a great number of community activities, including volunteering his time and talents as a musician to community and charitable events. He also entertained at local venues in the Cornwall area. In 1987 and again in 1991, Constable Dunlop was given the award of “Police Officer of the Year” by the Optimist Club.

Relevant Aspects of Perry Dunlop’s Personal Connections

As indicated, the focus of this Report is on institutional response. In the case of Mr. Dunlop, some aspects of his personal life and family connections are relevant to understanding what transpired.

Perry Dunlop married Helen Chisholm in 1989 at St. Andrew’s Church. Officiating at this wedding was Father Charles MacDonald. The Dunlops had three daughters, one of whom was baptized by Father MacDonald. The Dunlop family were members of the Roman Catholic faith. Mr. Dunlop was involved in activities in St. Andrew’s Parish, and he regularly attended this church, where Father MacDonald was a priest in residence.

Helen Dunlop testified before this Inquiry. She expressed herself forcefully and with firm convictions. As will be set out later in this chapter, Ms Dunlop became engaged in certain aspects of her husband’s work and also in his activities outside of work in relation to allegations of sexual abuse in the Cornwall area.

Carson Chisholm is the brother of Helen Dunlop, and also became involved in Perry Dunlop’s investigation activities outside of work. Mr. Chisholm also appeared before this Inquiry, speaking with colourful self-confidence and with a firm belief in his own convictions and actions. For example, when asked why he represented himself to people as a private investigator, Mr. Chisholm explained that he did not pass himself off “as a licensed investigator or any association with the police” and so “I’m private in that sense” and also said, “I don’t remember calling myself an investigator, but I in fact was an investigator.”

Helen Dunlop’s sister was married to Stuart McDonald, a police officer who was at various points Constable Dunlop’s superior officer at the Cornwall Police Service, both before and after his marriage to Helen Dunlop. Constable Dunlop’s interactions with this brother-in-law at work were limited, and the men did not

discuss work at family gatherings. Stuart McDonald retired in 1995. Ultimately, Perry Dunlop made serious personal allegations against retired Staff Inspector Stuart McDonald, which will be discussed later in this section.

Constable Dunlop Becomes Aware of the Silmsers Complaint

In December 1992, David Silmsers made a complaint of historical sexual abuse. The alleged perpetrators were Father Charles MacDonald, a Roman Catholic priest, and Ken Seguin, a probation officer. The case was initially assigned to Sergeant Claude Lortie and then to Constable Heidi Sebalj. This investigation is detailed elsewhere in this chapter.

According to subsequent statements made by Perry Dunlop, in September 1993, he gained knowledge of the sexual assault complaint.

The evidence and the documents were unclear as to how Constable Dunlop's initial knowledge was obtained. The officer says in an August 1994 affidavit that on September 24, 1993, he already knew about the allegations of sexual assault from Sergeant Lortie. Sergeant Lortie did not confirm this in his testimony before me. Correspondence from Constable Sebalj indicates that she showed Constable Dunlop the Silmsers statement on September 24, 1993. Unbeknownst to her, he made a copy of this statement and took it home. There, he discussed it with his wife, Helen.⁶³

According to subsequent statements made by Perry Dunlop, he took several actions in the fall of 1993 in relation to the Silmsers complaint. He checked the police computer network through the Ontario Municipal and Provincial Police Automation Co-Operative (OMPPAC) and found that the only information regarding the investigation of the Silmsers complaint was the location of the sexual assault, 40 Fourth Street West. This is the address of St. Columban's Parish in Cornwall. The last entry on the computer was dated January 18, 1993, with a notification that the initial complaint was overdue.

I note that there were also errors in the OMPPAC documents, including the information that the complainant, David Silmsers, was female.

Perry Dunlop swore an affidavit on August 30, 1994, that sets out the events in this period. It says that one morning while in the CIB office, Constable Dunlop overheard Sergeant Ron Lefebvre and Sergeant Lortie openly discussing the investigation of the Silmsers complaint. It was during that overheard discussion that Constable Dunlop first learned the investigation concerning Father MacDonald had recently been terminated because the Diocese and the priest had made a monetary settlement with the complainant. Constable Dunlop's affidavit also

63. Helen Dunlop said that this conversation was on September 23 or 24, 1993.

indicated that Sergeant Lortie had made it clear he strongly disagreed with the case being closed. The discussion is confirmed by Sergeant Lortie, who dates the conversation to September 28, 1993. I have heard other evidence that suggests it occurred on either September 23 or 24. He confirmed that he had been dissatisfied with the way the David Silmser case had been handled.

Constable Dunlop had strong ties with St. Andrew's Church, where Charles MacDonald was then residing. He regularly attended there, as did some of his friends and family. He was actively involved in the educational and social activities of the Diocese of Alexandria-Cornwall. In his affidavit, Constable Dunlop wrote that given the allegations against Father MacDonald, he was concerned about the safety of the children involved in parish activities.

At this point it is clear that, based on Constable Dunlop's knowledge at the time, his concern for the safety of children was reasonable.

On September 25, 1993, in the parking lot of Quinn's Inn during a social outing, Constable Perry Dunlop spoke to Executive Director Richard Abell of the Children's Aid Society (CAS) about the David Silmser complaint. Perry Dunlop and Richard Abell were then personal friends and involved in Church work together. Details of Constable Dunlop's further actions regarding David Silmser's complaint and his CPS colleagues, the local Crown attorney, and the CAS are set out in the relevant chapters of this Report. What is pertinent for understanding the Constable's state of mind is that he spoke to Staff Sergeant Luc Brunet about his continuing concerns for the safety of children, discussed the duty to report with Richard Abell of the CAS, and also sought the advice and support of his wife, Helen Dunlop, and his brother-in-law, Carson Chisholm. He provided a copy of the Silmser statement to Mr. Abell on September 30, 1993.

What is also relevant to understanding the context for the deterioration of working relationships over this period is that it appears that Helen Dunlop was attempting to contact David Silmser directly, and that Mr. Silmser complained to Constable Sebalj, who in turn reported the complaint to Staff Sergeant Brunet. This in turn led Staff Sergeant Brunet to caution Constable Dunlop regarding a possible breach of internal confidentiality and police policy. Constable Dunlop subsequently indicated that he felt threatened and coerced as a result of this discussion. I had the opportunity to see Staff Sergeant Brunet testify and hear his evidence. I am satisfied that he did not intend to coerce Perry Dunlop but to explain to him the ramifications of his actions and those of his wife. Having said this, I can also understand that Constable Dunlop might reasonably interpret the conversation as critical or as increasing pressure on him.

Based on the evidence I have reviewed and heard, Constable Dunlop acted properly by bringing the matter and his concerns to the attention of senior officers

and the CAS. After becoming aware of a suspicious and troubling situation, he sought the advice of the CAS and spoke to a superior officer, Staff Sergeant Brunet, regarding his concern that children were still at risk. He did not get any satisfactory explanations that suggested the perceived risk would be addressed. He then made the decision to formally report and provided the Silmser statement to the CAS, acting from both a moral and a legal perspective despite having to break ranks, so to speak, with the usual chain of command.

Some might argue that he should have tried to work this out within the chain of command in the police force. I do not agree. The law on the duty to report to the CAS cannot be “taken over” by anyone, be it an employer or even, in this case, a police service. The duty to report for professionals under the *Child and Family Services Act* arises if a professional has “reasonable grounds to suspect that a child is or may be suffering or have suffered abuse.” If this is the case, the professional is required to report the suspicion and information to the CAS.⁶⁴ A peace officer is specifically mentioned as a professional with a duty to report.⁶⁵

Discipline Related to Disclosure to CAS

On October 7, 1993, Deputy Chief Joseph St. Denis requested that Staff Sergeant Garry Derochie investigate Perry Dunlop’s provision of a copy of the Silmser statement to the Children’s Aid Society of the United Counties of Stormont, Dundas & Glengarry. Staff Sergeant Derochie discussed the issue with Chief Claude Shaver and Deputy Chief St. Denis in mid-October, and on October 15, 1993, Chief Shaver decided that Constable Perry Dunlop should not be charged with any breach of the *Police Services Act* but only counselled. This counselling session did not occur.

According to the testimony of Staff Sergeant Derochie, he did not complete his investigation into Constable Dunlop’s actions until January 4, 1994, after reviewing two related OPP investigations. He again recommended that no discipline be imposed.

During this same timeframe, the CAS was investigating the information Constable Dunlop had reported, in Project Blue, its own investigation. Project Blue is fully described in the chapter on the institutional response of the Children’s Aid Society, but it is worth noting that the minutes of Project Blue meetings reveal efforts by CAS staff to schedule meetings with Constable Dunlop. Despite several efforts in late 1993 and 1994, the CAS staff found Constable Dunlop unresponsive

64. *Child and Family Services Act*, RSO 1990, c. 11, s. 72(3).

65. S. 72(4)(c).

to their requests, and in the end they ceased trying to contact him. Although these efforts coincided with a period in which the Constable had started to develop a stress-related illness, it is still troubling that he did not cooperate with an institution that was making a diligent effort to inquire into the issues he had brought to their attention.

In January 1994, Constable Dunlop booked off work, taking short-term sick leave. He indicated that he felt ostracized at work and “very anxious, my mind was racing, wondering why I was made to feel like the bad guy.” This short-term sick leave turned into long-term disability leave as Constable Dunlop remained off work until May 1997. Obtaining disability coverage was not straightforward, and caused additional worry and stress. Payment was not made by Sunlife insurance company until August 1994, and accumulated leave had to be used. In June 1994, Perry Dunlop started to see a psychiatrist.

In February 1994, at home on sick leave, Perry Dunlop received notice that a complaint had been made by David Silmser regarding the showing of a page of his statement on television. A complaint of this breach of confidentiality was made against the Cornwall Police Service as well as Constables Dunlop and Sebalj. Perry Dunlop has consistently denied providing David Silmser’s statement to the media. It has never been determined how this statement found its way to the media.

In April 1994, the insurer for the Cornwall Police Service, Scottish & York, wrote indicating that Perry Dunlop should retain his own lawyer, as one of the issues was whether Constable Dunlop had breached police force policy. This shocked the Constable. At that time, he was not receiving any disability payments, and this concern about legal representation was an added worry for the family. It took several weeks to sort out the issue of representation.

Perry Dunlop was formally served in relation to a lawsuit filed by David Silmser on May 9, 1994. Sergeant Lortie had visited Perry Dunlop at home on May 3, 1994, to indicate that the Cornwall Police Association would fight for the officer to receive insurance coverage. At that time, the Staff Sergeant also related that Deputy Chief St. Denis had told him that no *Police Services Act* charges against Constable Dunlop were forthcoming.

On May 14, 1994, Constable Dunlop was served by Staff Sergeant Derochie with a notice of a Public Board of Inquiry related to *Police Services Act* charges, including the charge that he was guilty of discreditable conduct and breach of confidence by releasing a copy of the Silmser statement to the CAS and divulging a matter required to be kept confidential, and also showing a statement from a complainant to the CAS without proper authority. The background to these charges includes the January 1994 press release prepared by the CPS and the

Cornwall Police Services Board, inviting the complainant to initiate a police complaint. This is fully discussed in this chapter.

The Board of Inquiry was convened in Ottawa in September 1994. The Board panel released its decision on January 31, 1995. The case was appealed and the Divisional Court heard the appeal in November 1995, dismissing it.

The Board of Inquiry found that Constable Dunlop had acquired knowledge of the Silmsr complaint in the course of his employment as a police officer, albeit in an informal manner since he was not the investigating officer. The Board considered that it appeared the complainant was truthful and Constable Dunlop thus had “reasonable grounds” to suspect a child had suffered abuse, and therefore that he had an obligation as a professional to report to the CAS. The Board pointed out that there was no allegation that Constable Dunlop had acted maliciously or without a basis for his belief that reasonable grounds existed. In other words, the Board declined to uphold the *Police Services Act* charges made against Constable Dunlop.

The Divisional Court, in its December 7, 1995, reasons, adopted the approach taken by the Board of Inquiry. Specifically, the Court said:⁶⁶

... Const. Dunlop was an active duty police officer who gained information in the course of his “professional or official duties”—it does not matter that he was not the officer assigned to the case—all police officers have a primary duty to prevent the commission of crime. Nor does it matter that the complainant D.S. was no longer a child as he was at the time of the alleged abuse.

Constable Dunlop in September 1993 had “reasonable grounds to suspect that a child—may have suffered abuse.” He had a duty, therefore, to “forthwith report the suspicion and information on which it is based to a society.”

In terms of whether Constable Dunlop was subject to the order of a senior officer regarding disclosure, the Court found that the duty to report prevailed over the obligation to follow an order of a senior officer not to disclose. The Court reasoned that to interpret otherwise would defeat the purpose of the provisions to require reports by professionals and to give them protection for such reports. I agree.

Back in the fall of 1994, it appeared there was a possibility that further *Police Services Act* charges against Constable Dunlop would be forthcoming. Possible charges were being considered in relation to comments made by the Constable

66. *Police Commissioner v. Dunlop*, 26 O.R. (3d), p. 586.

about his Board of Inquiry hearing, that he was refusing to be a “fall guy.” As well, in November 1994, a written complaint was filed by Doug Seguin, brother of the deceased Ken Seguin, alleging misconduct by Constable Dunlop. In the end, neither issue resulted in further *Police Services Act* charges, but during the period of uncertainty over their disposition, there was additional stress and worry for Constable Dunlop and his family. In my view, it also increased his perception that his employer was deliberately trying to harm him or discredit him.

1996 Independent Investigations While on Leave

After the dismissal of the *Police Services Act* charges, Constable Dunlop did not return to work, and by this time he had been off work for almost one year. In December 1995, Ms Laurel Rupert threatened Perry Dunlop and made death threats against his daughter. Ms Rupert pleaded guilty in July 1996 to the charge of uttering death threats and failing to comply with conditions to stay away from the Dunlop residence. I accept that Perry Dunlop believed that his family was at risk due to the media exposure associated with him and his family, and the sometimes contentious coverage. An analysis of this coverage is provided in Phase 1 expert testimony, in chapter 4 of this volume.

In June 1996, Perry Dunlop commenced a civil action against his employer, the Cornwall Police Service, the Cornwall Police Services Board, the Diocese of Alexandria-Cornwall, the Police Complaints Commissioner, and named individuals. The named individuals were Claude Shaver, Carl Johnson, Joseph St. Denis, Luc Brunet, Brendon Wells, Doug Seguin, and Malcolm MacDonald. Through his lawyer at the time, Charles Bourgeois, Perry Dunlop alleged malicious prosecution, negligence, abuse of process, and defamation, and specified a demand for over \$40 million in damages. Following a change in lawyers, the claim was later decreased to \$1.25 million in a fresh amended statement of claim.

From 1994 to 1996, there had been media coverage of the sexual abuse allegations in the Cornwall area and also about Perry and Helen Dunlop and Carson Chisholm. For example, *The Globe and Mail* featured a report on Constable Dunlop’s disclosure and the subsequent *Police Services Act* charges. On December 12, 1995, CBC Television aired an episode of *The Fifth Estate* in which both Perry and Helen Dunlop were interviewed. Entitled *The Man Who Made Waves*, the program was re-aired in 1996 and 1997. Some, but not all, of this coverage occurred because Mr. or Ms Dunlop spoke to media representatives. In this respect, some of the media coverage was generated by Perry Dunlop. As well, Mr. Chisholm wrote letters to the editor and spoke to reporters of local newspapers.

Perry Dunlop indicated that partly because of media coverage, victims of sexual abuse began to contact him to tell their story in June 1996. Constable Dunlop indicated that he spoke first to C-8, in June 1996, and that C-8 had asked

him to contact him during the previous winter. Perry Dunlop concluded, after several discussions with C-8, that it was important to contact Ron Leroux, a person identified by C-8, as he was “full of knowledge.” Perry Dunlop said the following in his April 7, 2000, will-state:

It became clear to me that Ron Leroux was the inside man. He was the operator who ran with these players. He was the U/C operator of the pedophile world. Although I had never met him as of this time I believe he was also a pedophile.

In June 1996, Perry Dunlop spoke to Carole Deschamps, Robert Renshaw’s sister, regarding her recollections of visitors to the home of Ken Seguin. He also spoke to the Ottawa lawyer of Albert Roy, Wendy Rogers, to obtain information on his civil suit.

He also spoke with Ann Bellefeuille, a local lawyer, regarding her observations of Ken Seguin and others in the company of young men. He spoke with the former spouse of Chief Shaver, Rachel Leduc. Perry Dunlop indicates that she expressed concern regarding the safety of his family. In September 1996, he met with David Silmser, John MacDonald, and C-19, and in October obtained a statement from C-19.

Perry Dunlop indicates that on September 11, 1996, he obtained contact information for Ron Leroux from C-8. After Constable Dunlop had made several calls to Ron Leroux, Mr. Leroux agreed to meet with him in Maine, where Ron Leroux was then residing. On October 7, 1996, Perry Dunlop had his first meeting with Ron Leroux. Constable Dunlop and his lawyer, Charles Bourgeois, had several further meetings with Ron Leroux that fall. The meetings took place in Maine and in Ontario. Ron Leroux talked to Perry Dunlop about his former neighbour and good friend, Ken Seguin, and the prominent men and teenagers he said had visited Ken Seguin at his home. He also talked about men and teenagers who had visited Malcolm MacDonald, Ken Seguin, and others at Mr. MacDonald’s cottage, a short distance from his home near Summerstown.

Also, during the fall of 1996, Perry Dunlop spoke with Travis Varley and became aware of the Varley shooting incident. This incident is discussed in the chapter on the institutional response of the Ministry of Community Safety and Correctional Services. The significant factor for Perry Dunlop was that prior to the shooting of Andrew MacDonald, probationers and other underage individuals had consumed alcohol at the home of Ken Seguin.

On November 11, 1996, Perry Dunlop met with Ron Leroux again, this time in Aurora. Mr. Dunlop indicates that it was at this meeting that Mr. Leroux confirmed a series of conversations he claimed had occurred in November 1993,

shortly before the death of Ken Seguin. According to Perry Dunlop's April 7, 2000, will-state, Ron Leroux had first mentioned these events at the Maine interview in October 1996 and had claimed that the conversations occurred at Ken Seguin's house. Mr. Leroux alleged that essentially, Father Charles MacDonald and Malcolm MacDonald had stated that Perry Dunlop and "his whole family" should be shot. Ken Seguin, according to Ron Leroux, had expressed private concerns to him about the safety of the Dunlops.

Perry Dunlop indicates that his knowledge of these three-year-old threats caused him to feel vulnerable. The fact that the OPP, after its investigation, told him it would not proceed with charges related to these alleged threats probably affected his attitude toward the OPP. However, Helen and Perry Dunlop were not told this by Detective Sergeant Pat Hall until January 6, 1999. The principal reason that the Detective Sergeant gave at that time appeared to relate to the comments made by Ron Leroux that the conversation was "ranting and ravings" rather than serious threats. Mr. Leroux repeated this belief in his testimony before me. He also said he did not say that someone wanted to kill Perry Dunlop, but rather that he had heard Father Charles MacDonald say, "I want the bastard dead," in reference to Perry Dunlop. He confirmed that he thought this was "just rants and ravings of an old man." He also said that his affidavits regarding the threats were exaggerated, that he had not written the statements he had signed, and that aspects of them were false.

I accept that Perry Dunlop did feel vulnerable in 1996 and 1997, although objectively it appears that the statements that concerned him were, at most, "rantings and ravings" and there was no serious threat.

Later in November 1996, Carson Chisholm, Helen and Perry Dunlop, and Charles Bourgeois went to the home of Helen Dunlop's brother-in-law and Perry Dunlop's former superior officer, Stuart McDonald. They confronted him regarding a possible relationship with Ron Leroux, Ken Seguin, and Malcolm MacDonald, based on information given to them by C-8 and Ron Leroux.

Stuart McDonald testified before this Inquiry, stating that he clearly recalled the meeting, as one might expect. He testified that he denied going to Ken Seguin's house or associating socially with Ken Seguin and Malcolm MacDonald. He also testified that he did not have the impression that Mr. Bourgeois or Mr. Dunlop believed his denials, and that he pointed out to the Dunlops that they had known him longer than "this Mr. Leroux." Mr. McDonald also testified that he offered to take a lie detector test but that Charles Bourgeois refused him. Mr. Leroux's statement also alleged that Stuart McDonald, Ken Seguin, Malcolm MacDonald, and Charles MacDonald were homosexual lovers. Stuart McDonald indicated in his testimony before me that the statement was false. Ron Leroux, in his testimony before me, indicated that he had not confirmed Stuart McDonald's

attendance at a “VIP meeting” or at Ken Seguin’s house, although he was able to identify the former CPS officer’s picture. Mr. Leroux appeared confused as to how the allegations against Stuart McDonald arose.

In late 1996, Perry Dunlop continued to contact individuals he believed had been abused, including Gerald Renshaw, C-15, and Albert Roy. He took statements from some but not all of the men and women he contacted. Perry Dunlop identified the following as persons from whom he took statements in this period: Gerald Renshaw, David Silmsen, C-18, C-8, Ron Leroux, C-99, Carole Deschamps, and C-15. I note that he took multiple statements from both C-8 and Ron Leroux. It also appears that Carson Chisholm spoke with many individuals but can identify only one individual from whom he took a written statement: Albert Lalonde.

In December 1996, Perry Dunlop’s lawyer, Charles Bourgeois, contacted the office of London Chief of Police and on December 18, 1996, delivered “the entire package of affidavits gathered so far” by Perry Dunlop to Chief Julian Fantino’s office. London Chief of Police Fantino, as he then was, had recently completed an investigation into abuse of young people called Project Guardian, and this was one reason he was chosen to receive the material from Perry Dunlop. As well, since Perry Dunlop had instigated litigation against his own police force, he would not have provided it to the Cornwall Police Service. The London Police Service did not investigate the allegations but provided the materials to the Criminal Investigation Branch at the OPP office in Orillia. This incident and the handling of the material provided by Perry Dunlop is covered in greater detail in the chapters on the institutional responses of the Ontario Provincial Police and the Ministry of the Attorney General.

Meetings with various men who may have been sexually abused, including C-68, continued up to March 1997. Perry Dunlop obtained statements from Robert Renshaw and C-130. In addition, Carson Chisholm and Ron Leroux went to Fort Lauderdale in December 1996 to see if they could identify any Cornwall individuals participating in sexual activities with young boys. This visit did not identify any information to substantiate Mr. Leroux’s information about improper conduct of Cornwall-area men with minors. On April 30, 1997, OPP Detective Sergeant Pat Hall of Project Truth called Perry Dunlop to say that he would be looking at allegations related to sexual abuse in the Cornwall area.

Perry Dunlop Returns to Work at the CPS

On May 19, 1997, Perry Dunlop returned to work at the Cornwall Police Service. He initially returned on a part-time basis, under the advice of his doctor, and returned to full-time duties over a period of approximately six months.

Soon after his return, according to Perry Dunlop's will-state, Detective Inspector Tim Smith of the OPP indicated to Constable Dunlop that he was in possession of the material provided by the Constable to Chief Fantino and that it could take six months to investigate all allegations. Detective Inspector Smith confirmed this June 1997 meeting, which is described in more detail in the chapter on the OPP. Detective Inspector Smith requested that all possible victims be forwarded to him and said that a special project had been established that included experienced sexual assault investigators. Detective Inspector Smith also told Constable Dunlop to advise his brother-in-law, Carson Chisholm, to stop taking statements. There is no indication as to whether Perry Dunlop complied with this request.

It is also Constable Dunlop's recollection that Detective Inspector Smith indicated that if sexual assault victims came forward to Perry Dunlop and wanted his presence for the statement, there would be "no problem with that."

On September 26, 1997, in the presence of Inspector Trew and Acting Sergeant Aikman of the CPS, Constable Dunlop was given a letter ordering him to disclose to Inspector Tim Smith "all notes, tapes, statements, etc." related to sexual assaults by Friday, October 3, 1997. Mr. Dunlop recounts that a later meeting, held in July 1998 with Detective Inspector Smith and Detective Sergeant Hall, revealed that the reason for this demand was the failure of the offices of the Attorney General and Solicitor General to provide the Project Truth investigation with all the materials Constable Dunlop had sent them. Constable Dunlop was asked to replicate the information and provide it by August 7, 1998. According to his will-state, Perry Dunlop provided some material in July–October 1998. The provision of material by Perry Dunlop was not timely, nor were efforts to obtain his material adequate. I note that throughout this period of obtaining information and material from Perry Dunlop, over several years, there was considerable confusion about what information was collected in the context of a criminal investigation and what was collected in support of the civil action that Constable Dunlop had instituted. As discussed in the chapter on the institutional response of the Ontario Provincial Police, there was never a systematic approach taken as to what, if anything, was subject to solicitor–client privilege and what should have been disclosed.

At the end of 1997, after Constable Dunlop had returned to full-time duties, there was a complaint by Ron Wilson, a member of the Cornwall Police Services Board, regarding Perry Dunlop. The allegation was that he had made comments over a public address system that referred to a deceased officer and a seriously ill colleague in a joking manner. In approximately the same period, there were some very minor issues raised regarding Perry Dunlop's uniform. I accept the evidence of Staff Sergeant Derochie that he decided not to proceed with formal discipline on the public address system matter although he thought the incident

had occurred and was unsuccessful in his efforts to counsel Constable Dunlop informally.

In late 1998 and early 1999, Constable Dunlop received telephone calls from victims in Alberta and British Columbia alleging abuse in the Cornwall area. He also encountered individuals alleging abuse by Jean Luc Leblanc and Malcolm MacDonald and at the Cornwall Classical College. Constable Dunlop also indicated that he received calls from individuals whom he referred to Project Truth.

Contact with the media continued after Constable Dunlop's return to work. For example, in January 1999 Perry and Helen Dunlop were interviewed on CBC Radio Canada on a program called *Whistleblowers*, and on *Pamela Wallin Live* in February 1999.

Constable Dunlop met with Detective Inspector Hall and Detective Constable Joe Dupuis of the OPP on January 18, 2000, in the course of their Project Truth investigation. Prior to this meeting, on January 10, 2000, Constable Dunlop had received an order from Staff Sergeant Derochie of the CPS. The Constable had been ordered to provide full disclosure to Crown Attorney Claudette Wilhelm with respect to the Marcel Lalonde investigation. He was also ordered to disclose to Project Truth investigators any evidence in his possession related to their investigation and not to communicate with any alleged victim or witness in relation to Project Truth or the Lalonde prosecution. Constable Dunlop was ordered not to communicate with the public or media regarding the subject matter of the order or his involvement in any criminal proceedings. The disclosures were to include a detailed will-state describing all meetings with complainants and witnesses and any other involvement in either the Lalonde prosecution or the investigations that were the subject of Project Truth.

At their meeting, Detective Inspector Hall and Detective Constable Dupuis gave Constable Dunlop a list of forty-four questions. Perry Dunlop indicated that he was already preparing a will-state for the CPS that would in his view answer most of the questions. Constable Dunlop worked on his will-state through January, February, and March, and completed it on April 7, 2000. This constituted his full-time duties at work.

Perry Dunlop indicated that he felt hampered in his efforts by having a noisy office, no office telephone, and inadequate equipment and clerical support. His wife also refers to a "window-less, phone-less" office. Although Staff Sergeant Derochie agrees that there was no telephone, he said that the office had a window, had since been in use by a senior officer, and was not "a punishment" but typical of available offices at the Cornwall Police Service.

Perry Dunlop Leaves the CPS

In April 2000, Perry Dunlop resigned from the Cornwall Police Service effective the end of June 2000, and the family moved to British Columbia in July 2000. Ms

Dunlop referred to the resignation as being “under duress.” Factors she referred to include a lack of collegial support, not receiving a new position, and spending many months in an inadequate office without regular police work while drafting the requested will-state. A lawyer acting for Perry Dunlop sent a letter to the CPS, alleging constructive wrongful dismissal.

It is clear that following his return to full-time duties at the end of 1997, Constable Dunlop was not able to return to the career path he had prior to the disclosure of the Silmsker complaint. There were numerous “friction points” from the viewpoint of both Perry Dunlop and his employer. These included matters related to offices, assigned duties, use of the PA system, perceived denial of promotional opportunity, and so on. In addition, the issue of whether Constable Dunlop should be charged with offences related to testimony of C-8 in the Marcel Lalonde case arose in mid-1999, although it was concluded in July 2000 that no charges would be laid. In this period, it appears to me that Perry Dunlop was still preoccupied with issues touching upon his civil litigation, his sense of vulnerability related to past *Police Services Act* charges, and his concerns about family safety. Neither he nor his employer appeared able to move forward.

Shortly after leaving for British Columbia, Perry Dunlop wrote to the Honourable Jim Flaherty, then Attorney General for Ontario, enclosing the will-state he had composed while in the last months of work at the Cornwall police. Signing himself Constable Perry Dunlop, he concludes his letter by saying:

THE COMMUNITY NEEDS YOUR HELP.

AS I WRITE THIS LETTER FROM OUT OF PROVINCE I
UNDERSTAND THAT MPP GARRY GUZZO HAS PRESENTED
A BILL TO THE ONTARIO LEGISLATURE. I IMPORE YOU
TO SUPPORT THIS BILL AND PUT JUSTICE BACK ON TRACK
IN THE EASTERN END OF OUR PROVINCE.

A FULL PUBLIC INQUIRY IS NEEDED.

After Perry Dunlop's Departure

Although he was no longer employed as a police officer, Perry Dunlop continued to be relevant to some cases that proceeded through the courts.

With respect to the application for a stay in *R. v. Jacques Leduc*, defence counsel sought to have Mr. Dunlop return from British Columbia, but he did not appear on February 22, 2001, and the defence closed its case without evidence from him. A stay was ordered in the Leduc case related to non-disclosure of Dunlop-related documents. The Leduc matter is discussed in greater detail in

Chapters 11 and 7, on the institutional responses of the Ministry of the Attorney General and the Ontario Provincial Police.

On September 4, 2001, Perry Dunlop testified at the trial of Paul Lapierre in regard to brief contacts that he and Helen Dunlop had had with Claude Marleau, the complainant. The case of *R v. Lapierre* is discussed in greater detail in Chapters 8 and 11. While in Cornwall, Mr. Dunlop spoke on a local radio show, *Talk Back Radio*. He reiterated his call for a public inquiry.

On May 1 and 2, 2002, Perry Dunlop gave testimony about disclosures with respect to a motion related to *R. v. MacDonald*. On May 13, 2002, Justice Chilcott concluded that the trial had been unreasonably delayed, attributing much of the delay to Mr. Dunlop.

From August 16 to August 19, 2004, Mr. Dunlop testified at the *voir dire* in *R. v. Leduc*, related to an application to stay charges based on delay. On the third day, he read a written statement regarding the process, indicating that he felt misled and poorly treated as a witness. Crown Attorney Lidia Narozniak said that she had contacted Perry Dunlop by telephone in British Columbia to outline the application and the issues and identify areas of concern. She testified that Mr. Dunlop had been reluctant to come in early for discussions and preparation and indeed arrived only the evening before the examination commenced. Perry Dunlop's appearance on this motion is discussed in greater detail in the chapter on the Ministry of the Attorney General.

Perry Dunlop as Part of Institutional Response

In examining Perry Dunlop's contribution, I have been invited to find him either a hero or a villain. I will not do so.

Constable Dunlop was correct in making disclosure to the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry. It is regrettable that he was disciplined for this since it clearly led to an irretrievable breakdown in the employee–employer relationship. Neither Perry Dunlop nor the Cornwall Police Service was able to resume a normal relationship after this point. The stress related to this event and his family's sense of injustice stemming from it fundamentally changed the life of Perry Dunlop and his family.

During the critical 1996–1997 period, Perry Dunlop was in receipt of the legal services and advice of an inexperienced lawyer, Charles Bourgeois, and was relying on information given to him by Ron Leroux. Mr. Leroux testified before me, but cross-examination was curtailed for health reasons. I do not see this as an issue for this Inquiry. Ron Leroux is clearly a troubled soul. I cannot give reliance to his testimony, nor could I feel comfortable in relying on what he might have said in cross-examination. In our system of law, Mr. Leroux's evidence could not be found to be credible.

The reiterative nature of Ron Leroux's discussions with Perry Dunlop and Charles Bourgeois suggests a process to develop a narrative supportive of a desired theory. This is quite different from an investigation that builds on information received. It is troubling to me that a police officer like Perry Dunlop could not accept at some point that his informant, Ron Leroux, was not the definitive source he had hoped for when the Constable first heard of him from C-8. Many of Perry Dunlop's actions from late 1996 to early 1999 appear to be an effort to shore up Ron Leroux's information and find corroboration. These efforts were augmented by media contacts that were designed to sustain public support for Perry Dunlop. The results of a number of prosecutions point to the reality that his investigative efforts were not helpful to the complainants in cases of reported abuse. His disclosure failures meant that some cases were never tested on their merits. In the end, the investigations done by Perry Dunlop were also of no value in the civil action that he was pursuing.

Unfortunately, a pattern of mistrust between Perry Dunlop and institutions had become such a dominant mindset that it was impossible to re-establish trust, even when there were efforts to investigate and address cases of sexual abuse or to proceed with prosecutions. This distrust overwhelmed what I find was originally a genuine desire to be of help to children and young people. Even after calling repeatedly for the establishment of a public inquiry, Perry Dunlop could not engage with this Inquiry because of his entrenched distrust of institutions. In this, he followed a pattern that had already been set and that he had already followed many times.

Recommendations

Priority of Sexual Assault/Abuse Cases

1. The Cornwall Community Police Service (CCPS) must ensure that historical sexual assault/abuse⁶⁷ cases are accorded high priority and are treated with the same urgency as recent sexual assault/abuse cases. Appropriate measures must be taken to ensure that such investigations are conducted in an expeditious manner.

Training

2. Training on the investigation of sexual assault/abuse should be provided to all police officers as part of their basic training. This training should address child sexual assault/abuse, historical sexual assault/abuse and male-on-male sexual assault/abuse.
3. Regular refresher courses on sexual assault/abuse, including child sexual assault/abuse, historical sexual assault/abuse and male-on-male sexual assault/abuse, should be provided to all officers involved in investigating sexual assault/abuse cases. In addition, officers who are starting these types of investigations should receive or continue to receive in-service mentorship.
4. Criminal investigator training should include training on proper rapport building and interviewing techniques to be used with complainants of sexual assault/abuse, whether current or historical.
5. It is important that officers be trained in proper note taking and record keeping for sexual assault/abuse investigations. Such training should ensure that Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) and other electronic databases are fully utilized, loose-leaf notebooks are not used, notes are not destroyed (unless as specified in destruction or archival orders), and that blank lines are not left between notations or at the end of pages.
6. It is important that officers in the CCPS receive ongoing training regarding their statutory reporting duties to the Children's Aid Society (CAS) under the *Child and Family Services Act* to ensure that children at risk are protected.

67. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

Interviewing Sexual Assault/Abuse Complainants

7. All efforts should be made to ensure that interviews with complainants of sexual assault/abuse take place in a comfortable setting, for example, a neutral location rather than an interrogation room. Whenever possible, these interviews should be done in person, not by telephone.
8. Police officers should recognize that sexual assault/abuse complainants are often distrustful of persons in authority and should take the time necessary to build trust with complainants. Although this may require extra time and multiple visits, interviews about the details of the abuse should be as infrequent as possible.
9. The CCPS and the CAS should jointly conduct interviews with child complainants to minimize the number of interviews.
10. Police officers should realize that it might be difficult for complainants of historical child sexual assault/abuse to prepare their own written statements. They may not have the literacy skills or emotional strength to complete such a statement. Although written statements should be discouraged, if a complainant is asked to draft a written statement, an officer should be present to assist him or her. Any meetings convened with the complainant for the purpose of drafting his or her statement should be held in a comfortable setting.
11. When interviewing complainants of sexual assault/abuse, police officers should ask questions designed to ascertain whether there may be other potential victims of the same perpetrator or any other perpetrators.
12. It is important that the CCPS develop a protocol to ensure that complainants of sexual assault/abuse make their disclosures to and are interviewed by officers of the sex of their choice. This will ensure that the trauma of the complainant is reduced and enhance his or her ability to provide intimate and personal details of the sexual assault/abuse alleged.
13. Investigative protocols should require officers to help complainants to develop a plan to best recount their version of past events, including dates. Officers may suggest using certain techniques, such as collecting documents and photographs and/or creating a timeline. CCPS officers should be involved in obtaining these documents. In some circumstances, search warrants may be required.
14. Complainants should be offered the opportunity to be interviewed in the language of their choice. To ensure this choice is the

complainant's, the interviewing officer should not state his or her preference. If the complainant has difficulty expressing him or herself in English or French, every effort should be made to provide accommodation by way of interpreters or otherwise.

Communication With Complainants

15. The CCPS should institute or augment measures to ensure that victims and alleged victims of sexual assault/abuse and, in the case of children who are sexual abuse victims or alleged victims, their parents and family members, are offered support and apprised of the investigation, the laying of charges, and the court proceedings. This could be done by the CCPS directly, through the Victim/Witness Assistance Program (VWAP) or a liaison person as described in the recommendations in Phase 2 of this Report.
16. It is important that CCPS officers ensure that victims and alleged victims of sexual assault/abuse are advised of the outcome of any proceedings against the perpetrator and the sentence imposed by the court. This could be done by the CCPS directly or through a liaison person as described in the recommendations in Phase 2 of this Report.

Counselling Support Services

17. CCPS officers should continue to augment their knowledge of counselling and support services available for victims and alleged victims of sexual assault/abuse, including child sexual assault/abuse, for male-on-male sexual assault/abuse, and for their families. Police officers should always attempt to make referrals to these services when they receive a complaint of sexual assault/abuse.

Supervision of Investigators Working on Sexual Assault/Abuse Cases

18. It is important to ensure that CCPS officers involved in sexual assault/abuse and historical sexual assault/abuse investigations are supervised by experienced senior officers.

Note Taking, Record Keeping, and Accessing Records

19. It is critical that CCPS officers record and insert their notes of investigations into OMPPAC and other electronic databases to ensure that other police officers have access to information uncovered about the alleged perpetrator(s) of sexual assault/abuse.

20. It is important that CCPS officers involved in sexual assault/abuse investigations regularly access OMPPAC and other electronic databases such as the Canadian Police Information Centre (CPIC) to determine whether other officers in their police force or other police forces have information on the alleged perpetrator(s).
21. In addition to instructing CCPS officers on correct note-taking techniques (see number 5 above), the CCPS should take appropriate measures to ensure that its policy on the retention of officers' notes is clearly defined, well understood, and strictly enforced. The policy should stipulate that the officers' notes are the property of the CCPS and that should an officer retire or go on extended leave, his or her notes need to be turned over to the force. Such a policy must also address an efficient way to store these records so they can be searched and accessed whenever necessary.
22. A protocol should be developed on recording information by videotape or audiotape from witnesses in police interviews. It is important that the technology—video and audio—used by officers is of sufficiently high quality to ensure that the words, gestures, and body language of the person interviewed is accurately and fully recorded.

Conflict of Interest

23. In order to avoid an actual or perceived conflict of interest, an external police force should investigate, among other things, allegations of sexual assault/abuse of children by members or former members of the CCPS, or their family members.

Informing Employers

24. An order or directive should be developed that requires police officers to inform public institutions, such as school boards, child welfare agencies, hospitals, local religious institutions, and Justice partners, that an allegation of sexual assault/abuse has been made against one of their employees if the employee under investigation comes into contact with children in the course of their work. This protocol should also apply to anyone on contract with a public institution or community sector organization, such as a bus driver or cleaning staff, and anyone who volunteers with a public institution if the individual under investigation comes into contact with children in the course of his or her duties. Notification should be made by a designated senior CCPS officer

to a designated senior person in the public institution or community sector organization.

Recommendations for the Cornwall Community Police Services Board

Adequate Resources and Communications

25. The Cornwall Community Police Services Board (the Board) must ensure that the CCPS has the necessary resources, such as the requisite number of fully trained officers, to conduct investigations of sexual assault/abuse and, in particular, historical sexual assault/abuse cases, in a timely manner.
26. The Board must ensure that press releases should provide appropriate and accurate information to the public.

Recommendations for the Cornwall Community Police Service and Other Public Institutions

Child Protection Protocol, 2001

27. The CCPS is a partner in the Child Protection Protocol: A Coordinated Response in Eastern Ontario (July 2001). Since this protocol has not been updated, the CCPS should meet as soon as practicable with other partners to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on the sharing of information between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

Joint Training

28. The government of Ontario and the responsible ministries should reinstitute training for CAS workers and police officers as soon as practicable. This joint training should include specific training on responding to historical allegations of abuse. For some aspects of training, consideration should be given to including other Justice partners, such as Crown counsel or those working in hospitals in specialized assault units. Joint training might also support more standardization or the development of “best practices” protocols between police and Children’s Aid Societies.

Disclosure in Joint Investigations

29. In joint investigations involving more than one police force, a protocol should be developed that stipulates that one officer should be responsible for all disclosure requests. This officer should have a contact on the other force or forces who assists with disclosure, but should personally oversee and track which items have been disclosed to the Crown on behalf of all police forces involved in the investigation.

Major Case Management

30. The Ministry of the Attorney General and Ontario police agencies should review and compare their major case management protocols to identify and rectify inconsistencies and gaps.

Institutional Response of the Ontario Provincial Police

Introduction

The vision of the Ontario Provincial Police is “Safe Communities ... A Secure Ontario.” This reflects the community policing philosophy mandated by the government of Ontario in 1990, a philosophy that stresses collaboration with other institutions and the community served in carrying out policing functions.¹

Headquartered in Orillia, the Ontario Provincial Police (OPP) is responsible for policing services in 400 communities across Ontario, including those outside the City of Cornwall in the United Counties of Stormont, Dundas & Glengarry. In 2005, there were approximately 5,500 uniformed officers and 1,800 civilian personnel providing policing services in six Ontario regions, including the Eastern Region, where the Counties of Stormont, Dundas & Glengarry are located.

In addition to direct policing in communities across Ontario, the OPP is responsible for provincial policing services that include policing on highways, waterways, provincial parks, and trail systems; providing emergency police response and resources for incidents or disasters beyond the ability of the police service of the jurisdiction involved; and providing investigative expertise and assistance to municipal forces. It leads many joint-force multi-jurisdictional task forces, and is responsible for province-wide systems such as the Ontario Sex Offender Registry and the Provincial Violent Crime Linkage Analysis System. The OPP also provides specialized services through various programs such as the canine and collision reconstruction programs.

1. Community policing involves a number of activities to engage the community served, including public consultation and education, protocols with community agencies and institutions, training to increase police sensitivity to the diverse population served, being representative of the community served, and respect for victims of crime and their needs.

This chapter will consider the investigations conducted by the OPP in 1994 at the request of the Cornwall Police Service and during Project Truth, a special project assigned to the OPP in 1997 in response to allegations of historical sexual abuse made in Cornwall and surrounding areas, as well as related investigations. Interactions between the OPP and other institutions, such as the Ministry of the Attorney General, will be examined.

History of the OPP

The Ontario Provincial Police was founded in 1909, with forty-five officers appointed by the government of Ontario.² By 1930, officers patrolling provincial highways had joined the OPP. By the 1940s, the OPP had developed a Criminal Investigation Branch (CIB) with specialized investigatory expertise.

In 1947, the first *Police Act* passed by the Ontario government came into effect.³ Among other things, this legislation permitted the OPP to provide full-time policing under contract to municipalities. It also formally recognized the role of the CIB in assisting municipal forces. By 1949, the OPP had 1,083 officers at 235 locations throughout the province. In the 1960s, the OPP experienced a major reorganization and went through rapid growth and technology change. By 1974, the OPP had hired its first female officers for active duty.

In 1972, the OPP began reporting to the Ministry of the Solicitor General, rather than the Ministry of the Attorney General, following a major government reorganization. The same Ministry continues to be responsible for the OPP, though it is now called the Ministry of Community Safety and Correctional Services.

The OPP has always had both commissioned and non-commissioned officers. Full-time constable is the first rank among non-commissioned officers, followed by sergeant, staff sergeant, and sergeant major. The first level among commissioned officers is inspector, followed by superintendent, chief superintendent, and deputy commissioner.⁴ All investigative roles have “detective” added to their title (e.g., detective sergeant or detective inspector). The most senior officer of the OPP is the Commissioner of the Ontario Provincial Police. Gwen Boniface held this position at the inception of this Inquiry. Julian Fantino, the current Commissioner of the Ontario Provincial Police, succeeded her on October 30, 2006.

2. At that time, it was called the Ontario Provincial Police Force.

3. 1946, S.O. 1946, c. 72.

4. To be commissioned means to be appointed by Order-in-Council. As of 2006, there were fewer than 200 commissioned officers in the OPP.

OPP Reorganizations Since 1983

The organization of the OPP was unchanged from 1974 to early 1983. It had six divisions, each headed by an Assistant Commissioner, who in turn reported to one of two Deputy Commissioners, depending on whether the division provided Services or Operations. The Operations area was larger, comprising the Traffic Division, the Field Division, and the Special Services Division, which included the Criminal Investigation Branch. The Field Division administered seventeen district headquarters.

A major reorganization occurred in 1983. The two Deputy Commissioners and six Assistant Commissioners were replaced with three Deputy Commissioners. One Deputy Commissioner was responsible for Investigations, made up of the Investigation Division and the Investigation Support Division. The Deputy Commissioner responsible for Field Operations administered sixteen districts through the Chief Superintendent of the Field Operations Division.

In 1987, Field Operations was divided into three divisions, each led by a Chief Superintendent. The sixteen districts were divided among these three field divisions. The other areas of the OPP were not significantly changed in the 1987 reorganization.

There was another major reorganization of the OPP effective 1995. The three Field Divisions and sixteen districts were replaced with six regional offices reporting to the Deputy Commissioner of Provincial Command Operations. This Deputy Commissioner was also responsible for the Criminal Investigation Bureau. The reorganization also restructured detachments to establish a critical mass of officers under one Detachment Commander. This substantially increased the number of OPP locations providing twenty-four-hour “on duty” coverage.

In 2000, further changes increased the number of provincial commands headed by a Deputy Commissioner from two to three and added a civilian Provincial Commander. Responsibility for Traffic Services and Field Services was separated from investigative policing functions. The Investigation Bureau, formerly known as the Criminal Investigation Bureau, included a Criminal Investigations Branch, formerly called the Major Cases Section. Throughout the various reorganizations, there continued to be a criminal investigation branch that reported to OPP Headquarters, as opposed to any individual region or district.

Further changes have occurred since 2000: a Highway Safety Division was created in the Greater Toronto region and the Intelligence Bureau was made independent of the Investigation Support Bureau. The Field Services and Criminal Investigation areas were not part of this reorganization.

Organization charts set out in Schedule 1 to this chapter illustrate the changes over time.

Changing Legislative Parameters and Police Orders

Since 1947, the OPP has been subject to the provisions of the *Police Services Act* or its predecessors.⁵ The *Police Services Act* applies to municipal police forces as well as to the Ontario Provincial Police. Regulations under the *Police Services Act* detail minimum standards for police forces in Ontario. An example is the 2004 *Major Case Management* regulation that affects cases involving a coordinated investigative team and a multidisciplinary approach.⁶

The most fundamental legislative change in recent years has come from the passage of the 1999 *Adequacy and Effectiveness of Police Services* regulation⁷ that details the “core functions” of all police forces identified under section 4(2) of the *Police Services Act*. The regulation was filed on January 8, 1999, and provided that police services boards had to evaluate the adequacy and effectiveness of their services and be in compliance with the regulation by January 1, 2001. This regulation set out areas in which police forces were required to have specific policies and to meet minimum standards. An example of a minimum standard is that a police officer performing criminal investigations has to have the skills, knowledge, and ability to undertake such an investigation.

The *Adequacy and Effectiveness of Police Services* regulation requires all police forces to have procedures and processes for undertaking and managing general criminal investigations, and specifically to have procedures and processes for investigations into physical and sexual abuse of children and sexual assaults.⁸ However, the regulation does not specifically require procedures and processes for the investigation of historical allegations of abuse or assault. The *Adequacy and Effectiveness of Police Services* regulation also reiterates requirements for police services to have procedures for providing assistance to victims and setting out police responsibilities in assisting victims.⁹

Police Orders are the mechanism used by the OPP to give broad direction to officers and employees. Police Orders communicate policy, procedures, directions, and guidelines from the OPP Commissioner to all employees. Police Orders have been in place in some form since 1922. There was a major restructuring of Police Orders in response to the *Adequacy and Effectiveness of Police Services* regulation. This restructuring led to the creation of six sections for Police Orders, following the *Adequacy and Effectiveness of Police Services*

5. In 1947, the governing statute was the *Police Act, 1946*, S.O. 1946, c. 72.

6. O. Reg. 354/04.

7. O. Reg. 3/99.

8. *Adequacy and Effectiveness of Police Services*, O. Reg. 3/99, s. 12(1).

9. O. Reg. 3/99, s. 17.

regulation categories,¹⁰ and also provided a series of detailed manuals for the guidance of officers. Police Orders are internal documents—they are not available to the public.

Although Police Orders have existed for decades, they have never been “substitutes for sound judgment and discretion.” However, officers can be disciplined if they do not follow mandatory aspects of Police Orders, and even non-mandatory orders should be followed unless there is a cogent reason or circumstance. Guidelines issued by the government of Ontario or guidelines included in manuals as part of the Police Orders are not formal orders and are not mandatory.

The first Police Orders to deal specifically with abuse and neglect of children were introduced in 2005. They cover historical abuse, although there are no differences in investigative procedures for historical cases. Prior to 2005, the Police Orders dealt only with children in need of protection under the *Child and Family Services Act*. In 2006, a chapter on sexual assault investigations was added to the Police Orders. This chapter contained information covered by previous or existing policies. Police Orders related to victim assistance and services were revamped in 2001 in response to the *Adequacy* regulation but have existed since 1986. The 1995 *Victims’ Bill of Rights* mandated police forces to have consideration for the needs of victims of crime, including information needs. As a result, OPP policy in this area was developed before the *Adequacy and Effectiveness of Police Services* regulation.

Since 1947, members of the public and members of the OPP have had a statutory right to make a complaint about an officer that could result in an inquiry.¹¹ In 1980, it was clarified that there was a six-month limitation period for making a complaint, and that time period generally continues to apply.¹² The procedures for complaints by members of the public have changed several times—in 1990 and 1997. They changed again recently with the proclamation of the *Independent Police Review Act*.¹³ These changes in the legislative regime governing public complaints have related largely to the extent to which the mechanism for investigation or hearing of public complaints against police officers is independent of police authorities.

Changing Record Keeping

Up until the 1970s, any criminal complaint was noted in a written “occurrence book,” accompanied by a supplementary report if more serious. An occurrence

10. The six areas are (1) crime prevention, (2) law enforcement, (3) victim assistance, (4) public order maintenance, (5) emergency response services, and (6) administration and infrastructure.

11. Section 28(3) of the *Police Act, 1946*, S.O. 1946, c. 72, first established a statutory framework.

12. *Public Authorities Protection Act*, R.S.O. 1990, c. P.38.

13. S.O. 2007, c. 5. This bill received royal assent on May 17, 2007.

book could contain up to fifteen years of reportable incidents, and yet there was no retention policy for the books. In the 1970s, a “snap set” of reports was introduced to supplement occurrence book reporting, and a retention period of twenty years was established. Having to use one occurrence book created a bottleneck of officers at shift change. This ultimately led in the 1980s to the use of preprinted occurrence reports that could be completed at the scene of an incident or in officers’ vehicles. Supplementary report forms were available for major investigations. In the 1980s, the retention period was reduced to two years plus the current year, but Detachment Commanders had discretion to hold files in deferred status, as long as the deferred files were reviewed annually.

In the late 1980s and early 1990s, the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) system was introduced. It facilitated the preparation of all report types and information was stored in a central database at OPP General Headquarters. There was a policy on what could be shared with other organizations, such as other police forces. However, a Detachment Commander had discretion to restrict sharing of data. The synopses prepared for Crown briefs were not shared through OMPPAC. The file deferral system continued, but retention periods for crimes like sexual assault grew to seven years in OMPPAC.

In 2000, the Niche Records Management System (RMS) was introduced and is still in use. There have been some difficulties in converting the OMPPAC data to the Niche RMS. The extent of detail that can be recorded in Niche RMS is limitless, and photographs and fingerprints are often appended to reports. Detachment Commanders are responsible for monitoring quality and timeliness of reports and the status of required tasks.

There were officers who did not provide their police notes prior to testifying at the Inquiry, in particular Staff Sergeant Jim McWade and Chief Superintendent Carson Fougère. Staff Sergeant McWade advised that he had turned over his police notes to OPP Headquarters upon his retirement and that they could not be located for production at this Inquiry. Retired Chief Superintendent Fougère had his notes in his possession and brought them with him to the Inquiry.

When questioned about the difficulty in obtaining the notes of retired officers, Deputy Commissioner Chris Lewis testified that the OPP has long had a policy stating that officers are to turn over their notes to the OPP upon retirement. Unfortunately, at the time of the investigations discussed in this Report, he stated that the OPP had “dropped the ball” in communicating this policy to its employees. Moreover, Deputy Commissioner Lewis acknowledged that some officers were aware of the policy but ignored it. “In other cases,” he testified, “the people that were to receive the notebooks weren’t aware of the policy and said, ‘No we’re not taking them.’”

Deputy Commissioner Lewis testified that the OPP has “cleaned that up” and has now clearly defined who owns officers’ notebooks. They are the property of the OPP, not of the individual officers, and they are retained and stored by the OPP after retirement. That said, the Deputy Commissioner acknowledged that the policy on retention and access to notebooks still needs to be “tightened up a little bit.” I agree. I recommend that the OPP take appropriate measures to make certain that it has a clearly defined, well-understood, and strictly enforced policy on the retention of officers’ notes. Such a policy must also address an efficient way to store these records so they can be searched and accessed whenever necessary.

Major Case Management Procedures

Since 1993, certain offences were to be coded as “benchmark” cases and notice given to the supervisor to assess whether it should be assigned to a detective from the Criminal Investigation Branch or, if not, to ensure the case was assigned to a qualified investigator locally. All sexual occurrences and all crimes against children are benchmark cases. However, benchmarking did not mean all sexual assault cases were treated as major cases or assigned to the CIB, although some cases, such sexual offences at training schools, were automatically assigned to the CIB starting in 1997.

The OPP added major case management policies to Police Orders in 2002. The 1996 Report of Mr. Justice Archie Campbell in the Bernardo Investigation Review influenced both the 2002 Police Orders, which added the Major Case Management Manual, and the 2004 *Major Case Management* regulation. This regulation, made pursuant to the *Police Services Act*, required every police board to establish policies with respect to major cases, in accordance with the Ontario Major Case Management Manual provided by the Ministry of Community Safety and Correctional Services.¹⁴ The regulation mandates a specific software (PowerCase) for the purpose of undertaking and managing investigations into major cases.¹⁵ The regulation defines all sexual assaults as “major” cases.

Major case occurrences are deemed to be either “threshold” or “non-threshold” offences. As explained by Detective Staff Sergeant Paul Yelle, some cases of sexual assault are threshold cases and others are non-threshold. According to case management definitions, a major case occurrence is not a threshold offence if the suspect is known and the case involves historical sexual offences (reported more than one year after having been committed). In the language of the manual, these offences do not pass the threshold for major case management unless they are

14. O. Reg. 354/04, s. 1(1).

15. O. Reg. 354/04, s. 1(3).

“predatory or serial.” As well, if the offence involves a child who is abused by a family member, the case does not pass the threshold for major case management.

If a case is found to pass the threshold for major case management, it will be managed according to the related prescribed manual. A qualified major case manager is assigned to take overall responsibility for the investigation. The manager either acts as the primary investigation coordinator or assigns a coordinator who reports to him or her. A file coordinator, search warrant coordinator, media liaison, and victim liaison are also designated, all with specific responsibilities. In multi-jurisdictional major cases, a joint management team is created, involving representatives of the involved police services and other disciplines. The multi-jurisdictional management team reports to the Major Case Management Executive Board, which includes representatives from the Ministry of Community Safety and Correctional Services, the Coroner’s Office, Criminal Intelligence Service Ontario, the Ministry of the Attorney General, the Ontario Association of Chiefs of Police, the Chief of Police of Toronto, and the OPP Commissioner. Major cases have significant required structure and procedure, and greater access to resources and senior oversight.

Training and the OPP

The OPP provides training primarily through its internal OPP Academy and through the Ontario Police College in Aylmer. The OPP has had an internal training facility since the 1920s,¹⁶ and the Ontario Police Academy was established in the 1960s. The OPP does send its employees to courses and conferences offered by large municipal forces or the Canadian Police College, and to training facilities in the United States, but most OPP training is offered either through the OPP Academy or the Ontario Police College. Training is also offered on the job, particularly for new recruits, who are formally coached by senior field officers.

The OPP provides orientation training to its new recruits and training that may be unique to or of particular interest to the OPP, such as diversity and First Nations awareness training. The OPP also offers block training, which includes mandatory re-qualification courses such as advanced patrol training or first aid training. The Ontario Police College, however, is a primary source of training for the OPP, whether for new recruits, who undergo a twelve-week Basic

16. The OPP had a School of Instruction in 1920 that was replaced by an OPP Training School in 1929. This was replaced in 1935 by a joint school for municipal and OPP forces, and in 1944 an OPP-only Training School for new recruits was created. In 1974, an OPP Training and Development Centre was established in Brampton, and in 1998, the OPP Academy opened in Orillia.

Constable Training Program, or for experienced detectives, who may take specialized courses related to their work.

About 25 percent of the seats at any course at the Ontario Police College are allocated to the Ontario Provincial Police. Because demand for certain courses has exceeded the seats available at the College, the OPP, working with the College, has trained its own staff to deliver some Ontario Police College courses for which participants receive credit as if the course had been offered directly through the College in Aylmer. An example is the Sexual Assault Training Course, which has been delivered by both the Ontario Police College and the OPP Academy since 2002.

Following are the relevant investigative training courses that have been available from the Ontario Police College over time:

1964–1990	Criminal Investigation Training
1964–1990	Advanced Criminal Investigation, specialized training and completion of several modules
1990–	General Investigation Training Course, a prerequisite to other investigation courses; this course is required under the <i>Adequacy and Effectiveness of Police Services</i> regulation for anyone investigating a crime
Prior to 1985	Sexual Assault Investigation Course, included in Criminal Investigation Training
1985–1994	Advanced Criminal Investigation, with a five-day module on sexual offences, domestic violence, and child abuse; this module was updated in 1988 and redesigned in 1994
1994–	Sexual Assault Training; this course was updated in 1992 and 1999 to reflect the <i>Adequacy and Effectiveness of Police Services</i> regulation standards; the course does not include child abuse offences
1985–	Case Management Training, a five-day module in the Advanced Criminal Investigation course
1998–	Major Case Management Course, developed following release of the Campbell Report in 1996.

The Institute for the Prevention of Child Abuse (IPCA) took the lead in delivering joint Children's Aid Society/police outreach training, and the Ontario Police College also participated in this training. The IPCA also developed more

specialized courses, such as those involving the investigation and assessment of sexual abuse of very young children or case management of complex investigations. The joint training started in the early 1980s and continued until 1994. In 1995, the Ontario Association of Children's Aid Societies took over this training, and in 1996, there was a joint training protocol between the association and the Ontario Police College to deliver this program. In 2003, joint training was suspended and in 2005 the Ontario Police College started the delivery of a course to police officers: *Investigating Offences Against Children*.

Almost all observers, whether police, child welfare organizations, or experts, point to the end of joint training between child welfare agencies and police forces as a great loss. Since these organizations need to work in partnership to help children, the interaction afforded by training builds better day-to-day relationships and also allows organizations to understand and benefit from the perspectives and expertise offered by other organizations. The reinstitution of such training should proceed immediately and include specific training on responding to historical allegations of abuse. For some aspects of training, consideration should be given to including other justice partners, such as Crown counsel or those working in hospitals in specialized assault units. Joint training might also support more standardization or the development of “best practices” protocols between police and Children's Aid Societies, an outcome of interest to the Canadian Association of Chiefs of Police.

The OPP in Eastern Ontario

The United Counties of Stormont, Dundas & Glengarry are located in the Eastern Region of the Ontario Provincial Police, bordering both the Quebec and U.S. borders. Over time, the OPP personnel in the area have reported to regional or district headquarters in either Kingston (1987–1995) or Smiths Falls (since 1995). In 1995, reorganization within the three counties consolidated detachments and converted some detachments into satellite offices reporting to the “host detachment” of Stormont, Dundas & Glengarry in Long Sault. The satellite detachments are located in Lancaster, Alexandria, Morrisburg, and Winchester.

In 2005, there were 108 uniformed officers and 50 civilian personnel serving Stormont, Dundas & Glengarry, out of 990 officers and 288 civilian employees working in the Eastern Region.

Starting in 1988, there were Sexual Assault Coordinators who would offer resources to officers in the district. As of September 1994, there was a Regional Abuse Issues Coordinator in District 11, which includes Stormont, Dundas & Glengarry, as well as Prescott-Russell and Ottawa-Carleton. In 2001, Police

Orders formalized the positions and duties of Regional Abuse Issues Coordinator and Provincial Abuse Issues Coordinator.

There are a number of relevant protocols between the OPP and local organizations and institutions. These include:

1987	Draft—Child Abuse Protocol (Proposed Guidelines and Procedures for Response to Child Abuse in SD&G County Board of Education ¹⁷
1992	Child Sexual Abuse Protocol ¹⁸
1995	Police Shelter Protocol Dealing with Women Abuse in United Counties of Stormont, Dundas & Glengarry ¹⁹
2001	Eastern Ontario Region Police and School Board Protocol ²⁰
2001	Child Protection Protocol; Coordinated Response in Eastern Ontario ²¹
2002	Child Protection School Handbook—Eastern Ontario ²²
2002 (updated)	Police Shelter Protocol Dealing with Women Abuse in United Counties of Stormont, Dundas & Glengarry ²³

17. Parties to this agreement were not specified. It was written by the Board of Education.

18. The protocol is among District 11—OPP, Cornwall Police Service, Stormont, Dundas & Glengarry (SD&G) Roman Catholic School Board, SD&G County Board of Education, CAS of SD&G, Religious Hospitallers of St. Joseph Health Centre, and Ministry of the Attorney General—Cornwall Crown Attorney.

19. The protocol is among District 11—OPP, Cornwall Police Service, Alexandria Police Services, Maison Baldwin House, La Montée d'Elle, and Naomi's Family Resource Centre.

20. The signatories are not shown, but the protocol was developed by representatives of protocol partner agencies and services, namely the Catholic District School Board of Eastern Ontario, Upper Canada District School Board, Conseil Scolaire de District Catholique de Langue Française de L'Est Ontarien, Conseil des Écoles Publiques de l'Est Ontarien, the OPP, Cornwall Community Police Service, Brockville Police, Carleton Place Police, Perth Police Services, and Leeds-Grenville CAS.

21. The protocol was endorsed by Crown Attorney's Offices in Brockville, Cornwall, Smiths Falls/Perth and Plantagenet; the OPP in Eastern Ontario; police services in Cornwall, Brockville, Carleton Place/Perth, Gananoque, Prescott, and Smiths Falls; CAS in SD&G, Lanark County, Leeds-Grenville, and Prescott-Russell; all Eastern Ontario school boards; all hospitals in the area and the Children's Hospital of Eastern Ontario; and several local agencies.

22. There are no signatories, but the following were involved in development of the handbook: the OPP, Upper Canada District School Board, Catholic District School Board of Eastern Ontario, CAS of Leeds-Grenville and of SD&G, and Prescott-Russell Child and Family Services.

23. The signatory organizations are unchanged since 1995.

2002	Protocol for Investigation of Sudden and Unexpected Deaths of Children Under 2 Years of Age ²⁴
2002	Mental Health Protocol ²⁵
Date unknown but before 1994	Sexual Assault Response Team ²⁶
2005 (updated)	Service Agreement Between Cornwall Community Police Service, OPP, Partner Abuse Sexual Assault Care Team, Cornwall Hospital. ²⁷

One of the tasks of the Regional Abuse Issues Coordinator has been to compile a directory of services for victims. The most recent was produced in 2003. It strikes me that such directories should be more current; it is also the case that the provincial directory has not been updated since 2001.

Since 1994, there has been agreement between the OPP and the Cornwall Police Service for mutual support and cooperation and for the provision by the OPP of specialized services such as underwater searches or Breathalyzer technicians. This agreement was updated in 2006.

The OPP in Eastern Ontario does not have a court management protocol with the Crown Attorney's Office in Cornwall, but the OPP generally follows the OPP Court Case Management Manual and uses the Case Management and Criminal Court Protocol from Prescott-Russell Counties as an unofficial guide. The development of a court management protocol is overdue and should be developed and set out as soon as possible.

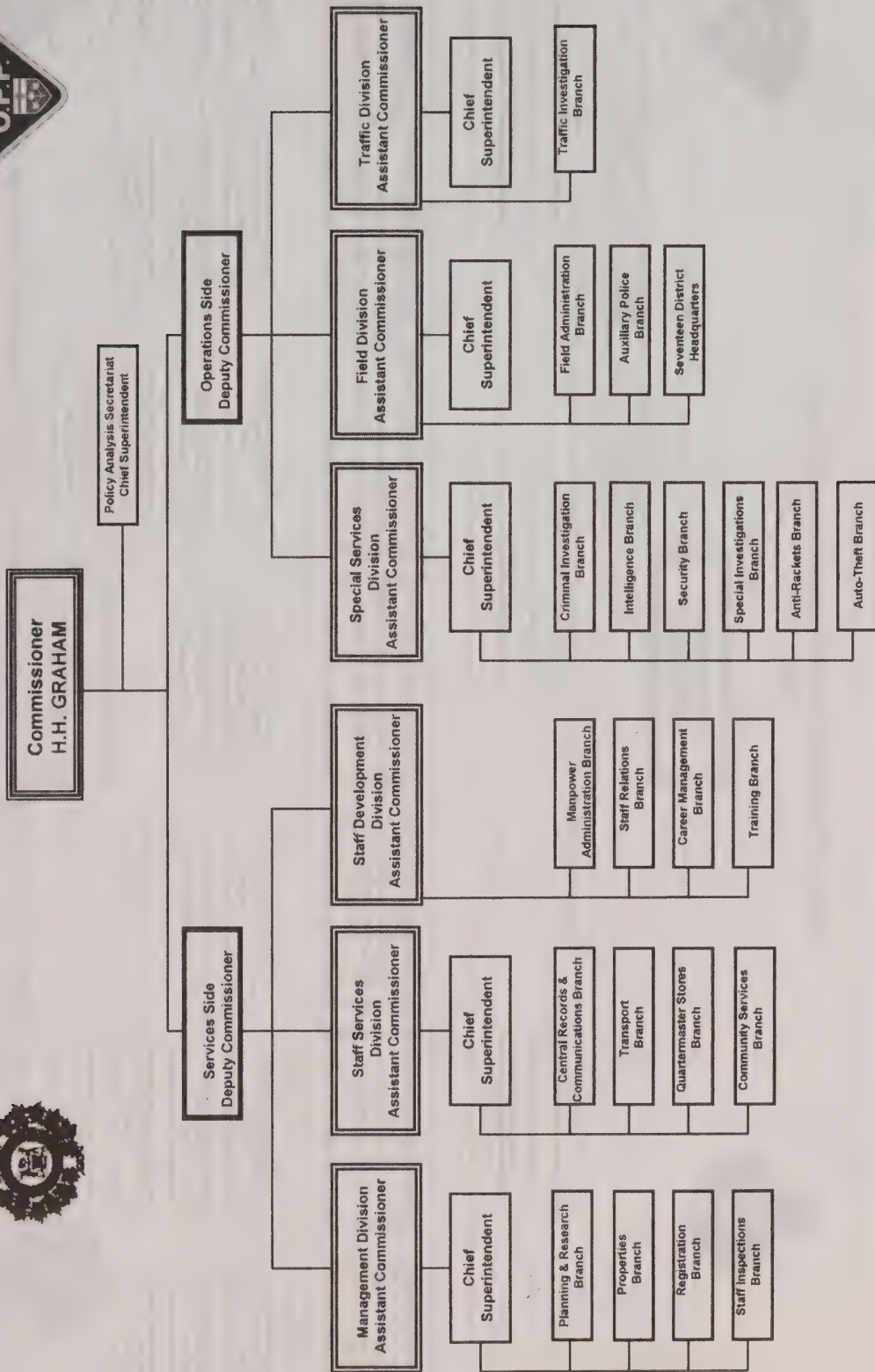
I would note that it is important to establish protocols and keep them current, reviewing them at least every three years. Even discussion of protocols is an opportunity to build relationships and identify emerging issues and therefore has value. John Liston of the Children's Aid Society of London and Middlesex, in expert evidence given before me regarding his experience in developing protocols with the police, explained that it was an opportunity to bring different but equally valuable work cultures together and to forge respectful partnerships. More important, having leaders from various organizations come forward and sign protocols related to abuse of children and sexual assault signals genuine commitment to staff and the public. In Mr. Liston's words, those leaders are standing behind the protocols and saying, "We believe this."

24. No signatories. This appears to be largely guidelines from the Coroner.

25. Signatories are the Cornwall Hospital Emergency Room and Mental Health Crisis Team, the OPP, Cornwall Community Police Service, and the Akwesasne Tribal Police.

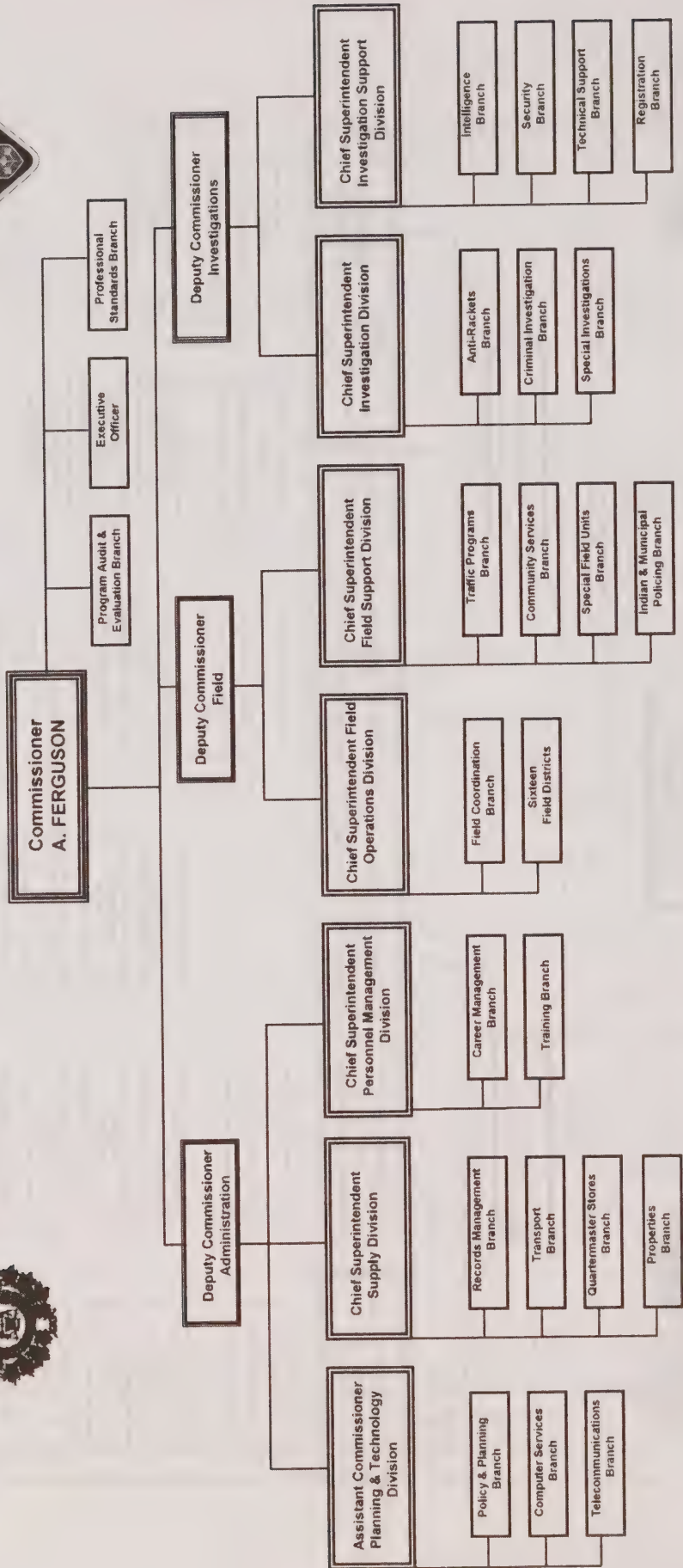
26. Signatories are the OPP, SD&G OPP, and the Sexual Assault Response Team.

27. Signatories are the OPP, Cornwall Community Police Service, and the Sexual Assault Team.



Source: This chart is based on information provided by the OPP's Erik Silk Library and was prepared by the OPP Strategic Analysis Unit, Intelligence Bureau.

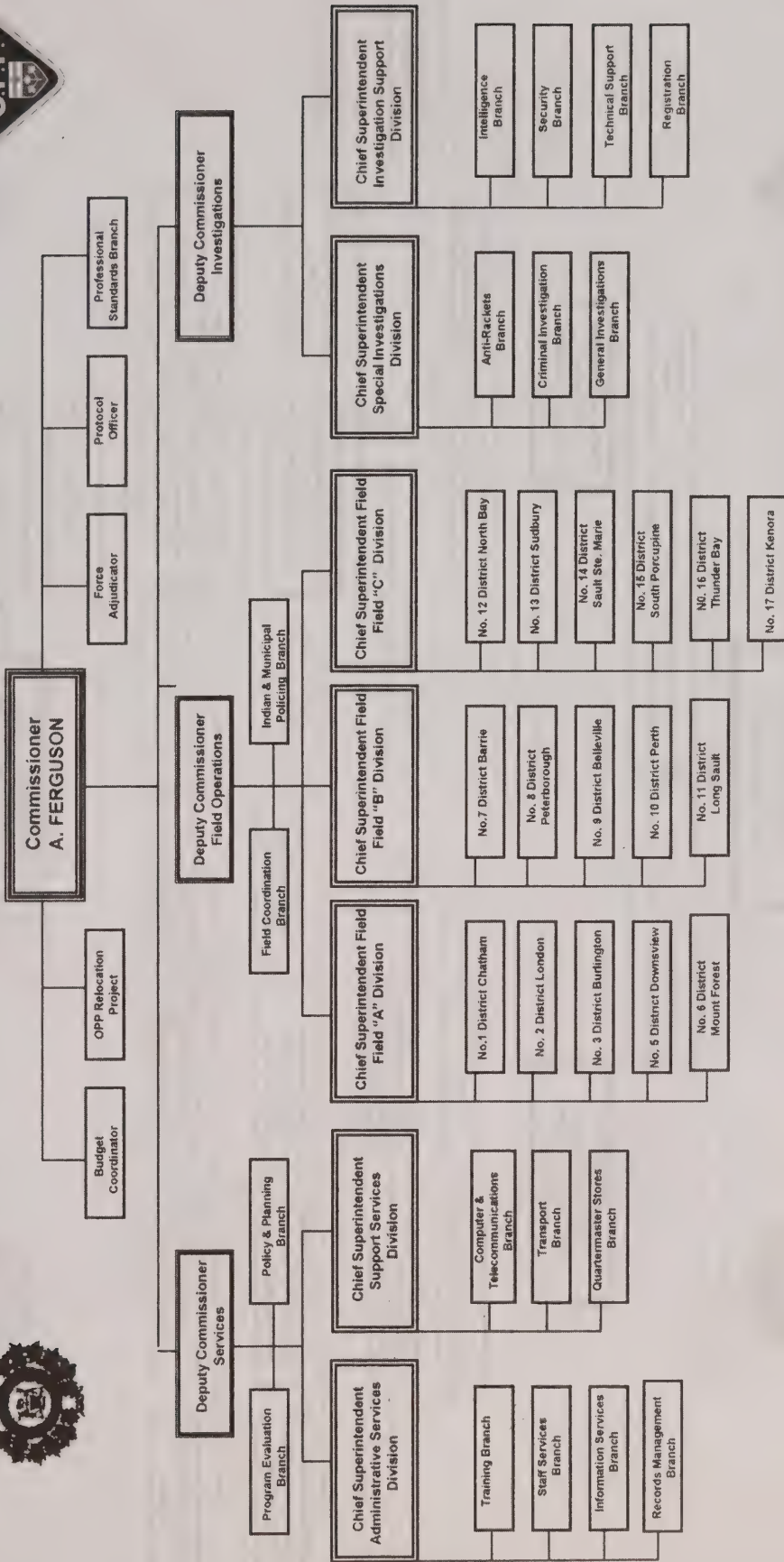
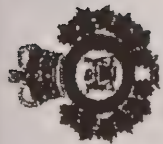
Ontario Provincial Police Organizational Chart 1983



Source: This chart is based on information provided by the OPP's Erik Silk Library and was prepared by the OPP Strategic Analysis Unit, Intelligence Bureau.

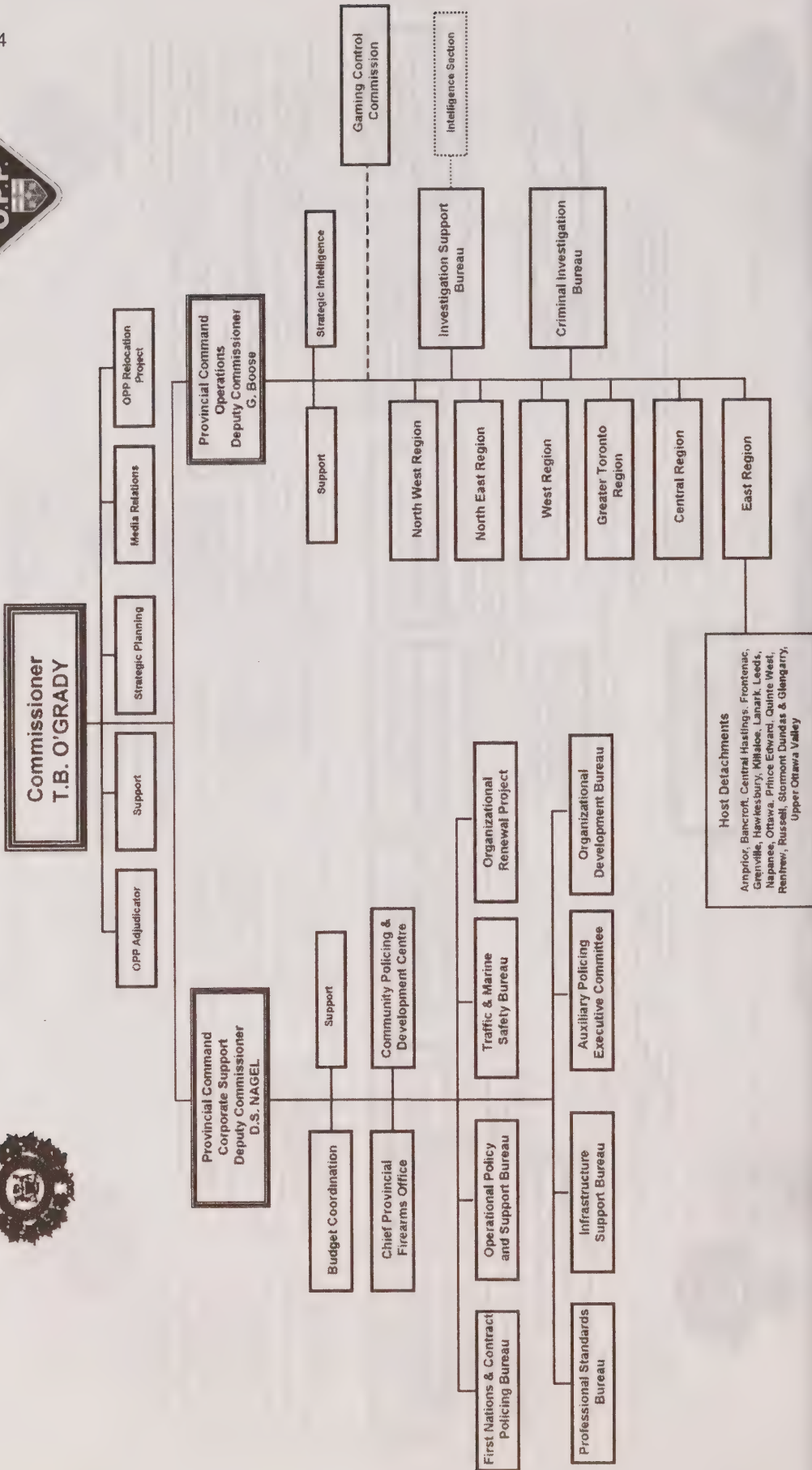
Ontario Provincial Police Organizational Chart

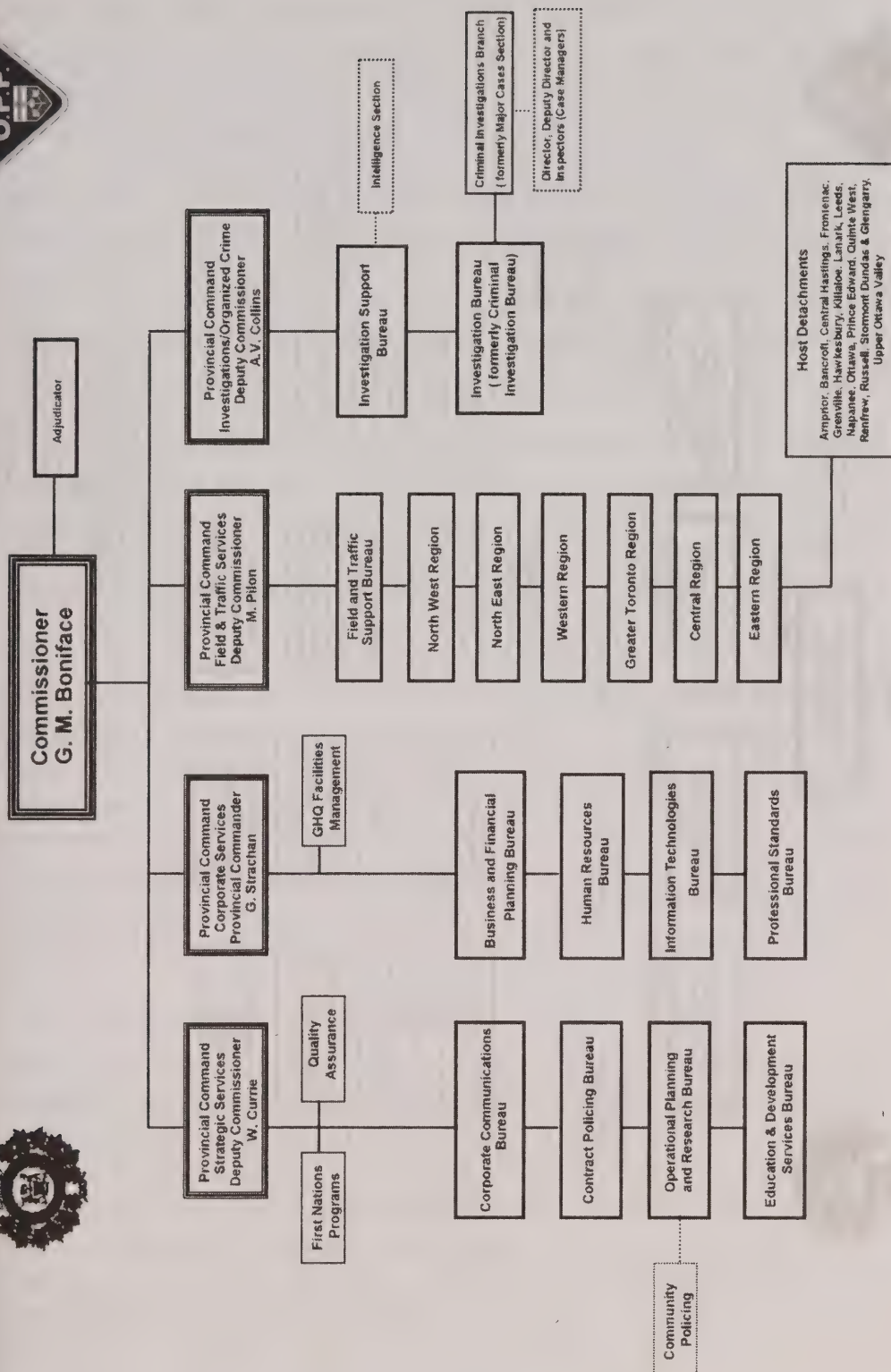
1987



Source: This chart is based on information provided by the OPP's Erik Silk Library and was prepared by the OPP Strategic Analysis Unit, Intelligence Bureau.

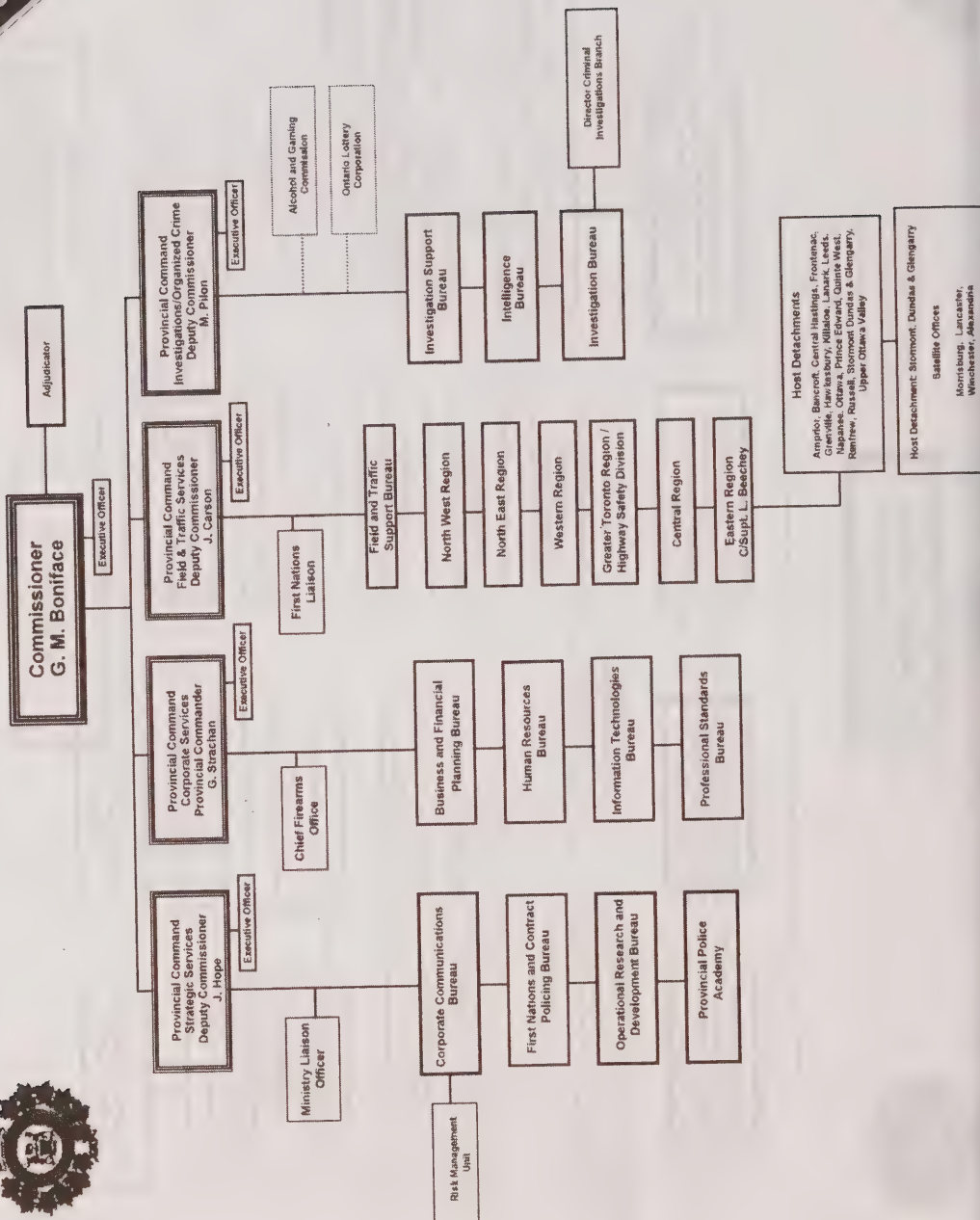
Ontario Provincial Police Organizational Chart 1995





Source: This chart is based on information provided by the OPP's Erik Silk Library and was prepared by the OPP Strategic Analysis Unit, Intelligence Bureau.

Ontario Provincial Police Organizational Chart 2005



Ken Seguin's Involvement in the Varley Investigation

In the early morning hours of January 9, 1992, Andrew MacDonald was fatally shot by his cousin, Travis Varley. On the evening of January 8, 1992, these two young men, accompanied by Bob Varley and Mark Woods, had visited Ken Seguin at his home in Summerstown. At the time, Mr. Woods was a Ministry of Correctional Services (MCS) client whom Mr. Seguin had previously supervised during a term of probation. In December 1991, Mr. Seguin had been assigned to prepare a pre-sentence report for him. Each of the four young men consumed a beer provided to him by Mr. Seguin while at his residence. Travis Varley took three additional bottles of beer from Mr. Seguin's fridge as they were leaving. Travis Varley shot Andrew MacDonald approximately seven hours after the young men had left Mr. Seguin's residence.

Early in the homicide investigation, the Ontario Provincial Police (OPP) became aware of Ken Seguin's involvement in this incident. The OPP did not immediately provide Mr. Seguin's employer, the MCS, with this information. His involvement is discussed in detail in Chapter 5, "Institutional Response of the Ministry of Community Safety and Correctional Services."

This investigation provided an early indication of Mr. Seguin's inappropriate conduct with probationers. In the years that followed this event, a number of former probationers came forward and alleged that Mr. Seguin had sexually abused them. Mr. Seguin was a central figure in the sexual abuse allegations that came to light during the OPP's Project Truth investigations. He also had close ties as a colleague or as a friend to others who were later investigated by the OPP for sexual abuse, such as Nelson Barque, Richard Hickerson, Father Charles MacDonald, Malcolm MacDonald, and Ron Leroux. However, the OPP missed an opportunity to uncover further inappropriate behaviour by Mr. Seguin in relation to his probationers and former probationers.

The Commencement of the Investigation

On January 9, 1992, Detective Inspector Tim Smith was assigned as the case manager in the Andrew MacDonald homicide investigation. At the time, Detective Inspector Smith was working from Ottawa on two major investigations into allegations of sexual abuse at the St. Joseph's and St. John's Training Schools.

Detective Constables Randy Millar and Chris McDonell were assigned as the case investigators. Due to their positions as detectives and experience in handling major crimes, these two officers were involved in a number of the investigations dealt with in this chapter.

Randy Millar had joined the OPP in 1982. He received his senior constable designation on May 12, 1992, and was promoted to detective constable at some point before October 13, 1993. Chris McDonell had joined the OPP in 1968 and became a detective constable in late 1991 or early 1992.

The Officers Take a Statement From Ken Seguin

Early in the investigation, through the questioning of two of the young men present, the officers learned of Ken Seguin's involvement on the night of the homicide. Detective Inspector Millar testified that he did not know Mr. Seguin before this incident and had never heard rumours about him before this incident. Detective Constable McDonell had known Mr. Seguin as a probation officer for twenty years. He stated that he had a good working relationship with him.

On January 15, 1992, Detective Constables Millar and McDonell took a statement from Mr. Seguin at the probation office. In the statement, Mr. Seguin described his professional relationship with Mark Woods and the circumstances of the visit to his home on the evening of January 8, 1992.

After the statement, there was an informal discussion between Mr. Seguin and the officers. Detective Inspector Millar testified that they discussed the fact that Mr. Seguin had provided alcohol to these young men and that it was not right. Detective Inspector Millar recalled that at some point, Mr. Seguin stated that he would notify his employer of the incident.

Detective Inspector Smith became aware that the four young men had visited Mr. Seguin's home the night of the homicide. At the time, Detective Inspector Smith was not familiar with Mr. Seguin or any of the local probation officers. Although Detective Inspector Smith testified that he thought Mr. Seguin's supervisor was aware of the incident even before Mr. Seguin was interviewed by officers, in light of the evidence of other OPP and MCS witnesses and their subsequent actions, it is clear to me that the Detective Inspector was mistaken: Mr. Seguin had not yet told Ministry personnel.

As discussed in Chapter 5, Mr. Seguin reported the incident to his supervisor, Area Manager Emile Robert, on January 16, 1992, the day after his interview by the OPP officers. However, Mr. Seguin failed to include any mention of alcohol in his incident report, and there was evidence to indicate that he did not advise Mr. Robert about the alcohol consumed by the young men in his home.

Decision to Wait Before Notifying Probation Office

It appears that the OPP took no formal or informal steps at this time to contact Ken Seguin's supervisor to report what they had learned of his conduct on the night

in question. OPP contact with the Cornwall Probation Office at this time was limited to informal discussions of the incident between Detective Constable McDonell and Carole Cardinal, one of Seguin's fellow probation officers. Detective Constable Millar may also have informally discussed the case with Jos van Diepen, another probation officer.

According to Detective Inspector Smith, the involvement of Mr. Seguin was discussed between himself, Assistant Crown Attorney Guy Simard, and Detective Constable Millar following Travis Varley's conviction. He testified as follows:

We felt that although it may not have been the cause or the root cause of what I refer to as a foolish drunken accident, that it could be a contributing factor because I think, as I recall, they left there around nine o'clock, and this shooting didn't occur until some four or five hours later.

But the concerns we had was that here's a probation officer doing the pre-sentence report for somebody the next day. Why is he doing it in his residence and why is he offering them beer? And I feel it should be on the record.

As to why formal notification had not taken place earlier, Detective Inspector Smith testified that they did not know there would be a guilty plea and therefore anticipated that somewhere along the line, Mr. Seguin might have to be called as a witness. They were concerned about antagonizing him before he testified.

When the matter was resolved through a guilty plea, Detective Inspector Smith made sure that the information about the young men drinking alcohol at Mr. Seguin's home was included in the agreed statement of facts so that it would be a matter of public record. Detective Inspector Smith testified that while the Crown was in agreement with his concerns regarding Mr. Seguin, the Crown felt that any letter to the probation office should come from the police. On the day of the sentencing, August 26, 1992, Detective Inspector Smith instructed Detective Constable Millar to write a letter to notify the probation supervisor of Mr. Seguin's involvement.

On September 3, 1992, Detective Constable Millar sent a letter to Emile Robert summarizing the OPP's information relating to Mr. Seguin's involvement. In addition to some of the information contained in Mr. Seguin's statement of January 15, 1992, the letter made a number of other observations, including the following:

During the interview with Seguin, I felt Seguin was obviously embarrassed and he made it clear he did not make a habit of having clients at his residence.

...

Seguin stated he felt intimidated by their presence and did not argue with Travis Varley when he took three beer from his fridge. He just wanted them to leave.

Seguin stated that he would notify his superior of this incident and also that without doubt he will be more selective on who he allows into his house in the future.

As discussed in more detail in Chapter 5, Mr. Robert forwarded Detective Constable Millar's letter to the Regional Manager, Roy Hawkins. In the covering letter, Mr. Robert wrote:

Due to the fact that Mr. Seguin's involvement was very brief and that he was embarrassed and made it clear that he had not the habit of having clients at his residence, Constable Millar and I recommend that no further action be taken.

Detective Inspector Millar testified that Mr. Robert did not provide him with a copy of this covering letter. He did not agree with the comment Mr. Robert attributed to him.

Police Communication With Government Agencies

There is no doubt that the Varley incident was a serious matter. As has been explained in Chapter 5, Ken Seguin lied about the full extent of his involvement on the evening of the homicide and further follow-up by corrections officials might have uncovered other inappropriate activity by Mr. Seguin.

It is unfortunate that the OPP officers' initial efforts to bring this incident to the attention of MCS staff were minimal. Ms Cardinal gained information from Detective Constable McDonnell informally, but it was not until eight months later that the matter was finally raised formally and directly with MCS staff.

Given the serious nature of the incident involved, in hindsight it would have been more appropriate for the letter to be sent by Detective Inspector Tim Smith, the case manager, directly to Mr. Roy Hawkins, the Regional Manager for the Cornwall Probation Office. Had a senior official at MCS, such as Mr. Hawkins, been the point of first contact regarding the incident, the fact that Mr. Seguin provided a misleading version of events could have become readily apparent

and led to a more robust response and investigation. This was a missed opportunity to uncover inappropriate behaviour.

As I have discussed in Chapter 5, even Mr. Seguin's played-down version of events should have raised significant warning flags and provoked a formal response from his employer. Similarly, notwithstanding the perhaps uncritical and apologetic nature of Detective Constable Millar's letter and its tardiness in being sent, it should have led to a more thorough investigation by the Ministry.

The letter appears to have been written at Detective Inspector Smith's insistence, and I credit him for his effort in bringing the matter to the attention of Ministry officials.

Should similar circumstances arise in which public servants or officials are engaged in inappropriate activity that comes to the attention of the police, whether criminal in nature or not, police forces should contact the Ministry or Crown agency to alert them of the conduct. Such correspondence should be addressed to a designated senior person in the Ministry or agency. This would increase the likelihood of a timely, objective, and appropriate response and would ensure that no one involved in the occurrence or in regular contact with the impugned employee would be involved in determining the proper response.

Videotapes Found in Ron Leroux's House by the OPP

In early 1993, officers from the Lancaster Detachment of the Ontario Provincial Police (OPP) seized a number of pornographic videotapes from Ron Leroux's residence in the course of conducting a search for firearms. These tapes, and their possible linkage to Ken Seguin and other alleged perpetrators of child sexual abuse, have been the source of significant commentary and controversy over the past fifteen years. The seizure and subsequent destruction of the tapes has been cited by several individuals, including Mr. Leroux, Constable Perry Dunlop, and Garry Guzzo, as proof of police incompetence or cover-up and conspiracy. They allege that the police went to Mr. Leroux's house and executed a firearms search warrant but that they were already aware of the existence of the tapes and were able to locate them immediately upon their arrival. It was also alleged that the tapes contained incriminating footage of prominent members of the Cornwall community with young boys and that the police therefore destroyed them.

C-8 Makes a Complaint Against Ron Leroux to the OPP

On December 18, 1992, Constable Steve McDougald of the OPP Lancaster Detachment received a telephone call from C-8 reporting a complaint against Ron Leroux. Constable McDougald had started his career with the OPP in

November 1987 at the Marathon Detachment. In February 1992, at the rank of constable, he transferred to the Lancaster Detachment.

In the telephone call, C-8 alleged that Mr. Leroux was harassing him, his ex-girlfriend, and his current girlfriend and her family. C-8 also alleged that Mr. Leroux was perhaps suicidal and possessed a number of weapons. C-8 further advised that he was himself in possession of four of Mr. Leroux's weapons.

C-8 attended the Lancaster Detachment the same day, gave a statement to Constable McDougald, and turned over four handguns. C-8 explained that he had taken the guns from Mr. Leroux's home because he was worried that Mr. Leroux would hurt himself or someone else. C-8 also said that lawyer Malcolm MacDonald was handling a real estate transaction between himself and Mr. Leroux.

On December 20, 1992, Constables McDougald and Patrick Dussault of the OPP Lancaster Detachment attended at Mr. Leroux's residence, advised him of the complaint, and issued a warning. Mr. Leroux denied that he had engaged in any harassing behaviour and denied being suicidal. On January 10, 1993, Mr. Leroux told Constable McDougald that C-8 could have the guns that had been turned over.

The OPP Learn That Ron Leroux Had Two More Firearms Registered

Staff Sergeant Jim McWade was, at the time, the Detachment Commander in Lancaster. Staff Sergeant McWade had started with the OPP in 1969. He became a staff sergeant and was posted at the Lancaster Detachment in January 1990. He was the Detachment Commander there until he was transferred in November 1993 to Renfrew. He retired from the OPP in December 2001.

Having been made aware of the complaint and the weapons that were turned over by C-8, Staff Sergeant McWade testified that he called the firearms registration office to obtain information about all weapons registered in Ron Leroux's name and the location to which they were properly registered. On February 9, 1993, Staff Sergeant McWade advised Constable McDougald that two outstanding weapons were registered to Ron Leroux's name at a Cornwall address and that Mr. Leroux could be in possession of those weapons. It was decided to obtain a search warrant to search Mr. Leroux's property for these two firearms.

The OPP Execute a Search Warrant at Ron Leroux's Residence

On February 10, 1993, Constable McDougald swore an information to obtain a search warrant to search Ron Leroux's house, garage, and boathouse for the two outstanding firearms.

Once the search warrant had been obtained, Constable McDougald and Detective Constable Randy Millar attended Mr. Leroux's residence. Detective Constable

Millar joined Constable McDougald in the search because this was the first warrant that Constable McDougald had been involved with and he wanted someone with experience to assist. When the officers arrived, no one was there and the house was locked. The officers returned to the detachment.

Upon returning to the detachment, Constable McDougald contacted C-8, who said that he did not have a key to Mr. Leroux's residence and that the locks had been changed. Constable McDougald also called Malcolm MacDonald, who advised that Mr. Leroux had been in Florida for two weeks, that he did not know where a key to Mr. Leroux's house was, and that he would not be available to attend the house. C-8 then called Constable McDougald back and said that he had obtained a key to Mr. Leroux's house from his mother and that he was, in fact, calling from inside the house. He further told the officers that he had already located one of the handguns.

The officers returned to Mr. Leroux's house and were let in by C-8. C-8 gave them a handgun that he said he had found in the front closet. Constable McDougald testified that he was not pleased that C-8 had done some of the work for them already. However, there is no indication that this was expressed to C-8, and C-8 was not asked to leave the residence while the officers conducted their search. The officers commenced a search for other weapons. Detective Constable Millar went upstairs on his own while Constable McDougald was speaking to C-8.

Detective Constable Millar searched a closet in the upstairs bedroom. From inside the closet, he located a cubbyhole that led to a space underneath the tub in the adjacent bathroom. In that cubbyhole, he located a suitcase that had obviously been hidden and was locked with a small padlock. There were two loose videotapes on top of the suitcase.

Having removed the case, Detective Constable Millar removed the padlock, opened the case, and found it contained approximately twenty more videotapes. Constable McDougald testified that some appeared commercially made and some were store-bought blank tapes with labels on them.

C-8 testified that Detective Constable Millar found the tapes "way too fast," suggesting that the officer, once upstairs, went straight to the cupboard before looking anywhere else. I have reviewed the sketch of the residence and in my view this can be explained by the fact that the upstairs contained only one bedroom and an adjacent bathroom.

Detective Inspector Millar testified that he did not view any of the tapes. However, his suspicions were raised because the tapes had clearly been hidden. He tried to call Project P, a specialized OPP unit that deals mainly with child pornography, from the residence but was unable to reach them.

Like Detective Inspector Millar, C-8 also testified that he did not witness the videotapes being viewed at the residence. Constable McDougald, however, testified that one tape was placed in a video recorder at the residence and viewed.

It contained scenes of male homosexual acts. This testimony is consistent with Constable McDougald's contemporaneous notes. It is possible that he viewed the tape while neither Detective Constable Millar nor C-8 were present.

The tapes were seized, along with the suitcase, the gun turned over by C-8, and an old rusty handgun subsequently found in a closet. Detective Constable Millar had no further involvement in the matter after the search and seizure.

Return to Justice Form Does Not Identify Seized Materials

On February 16, 1993, Constable McDougald prepared a return to justice form that identified the two firearms seized. He also checked a box to indicate that items not identified on the search warrant were seized, but he did not specifically identify the videotapes or the suitcase, as required by law. The return to justice form had a blank portion of the page for that very purpose. Constable McDougald testified that he had made a mistake by not listing the videotapes and that he had no explanation as to how this mistake occurred. Having reviewed his evidence and others, I have no reason to doubt that his mistake, although unexplained, was innocent in nature.

Review of the Videotapes

After seizing the materials, Constable McDougald had a discussion with Staff Sergeant McWade about what should be done with them. Staff Sergeant McWade asked Constable McDougald to review the videotapes and advised that sometimes videotapes were doctored and material of a criminal nature was spliced partway into an existing tape. The videotapes were to be reviewed for the portrayal of any kind of criminal activity, such as child pornography, snuff films, bondage, or any violation of the *Criminal Code*.

Constable McDougald testified that he told Staff Sergeant McWade he was neither interested in nor comfortable reviewing the tapes. When Constable McDougald expressed his discomfort, Staff Sergeant McWade suggested that he go through the tapes by pressing play and fast forwarding through parts. These instructions did not require viewing the videotapes from beginning to end. Staff Sergeant McWade recalled giving instructions to view the videos by looking at the start, the finish, and randomly throughout.

In a statement given by Constable McDougald to Detective Sergeant Pat Hall on December 11, 1998, he stated: "It was determined by S/Sgt. McWade, that I view the videotapes randomly, to ascertain if there was any child pornography, or home videos of local people." In his testimony, Staff Sergeant McWade did not recall instructing the officer to look for "home videos of local people," and Constable McDougald testified that he did not receive such an instruction from

Staff Sergeant McWade. Constable McDougald testified that he had made this comment in his notes but had used the wrong terminology—he did not mean that he was looking for local people. There was, in fact, no reference to “local people” in the notes of Constable McDougald that were put into evidence. The officer’s assertion that he had used the “wrong terminology” is a possible explanation of the conflict between his statement of December 11, 1998, and his evidence before me.

Constable McDougald has notes of reviewing the videotapes on February 17, 1993, for approximately two and one-half hours, from 9:10 p.m. to 11:50 p.m., and on February 18, 1993, from 2:00 a.m. to 2:30 a.m. He testified that the second review was conducted with Constable Dussault. Staff Sergeant McWade testified that he was in the room for a short time while the officers were reviewing the tapes and saw a bit of the contents of the videotapes himself. In a will-state, Constable McDougald wrote, “Each tape was plays [sic] for several seconds to determine what was on the tape and then fast forwarded to another section of the tape and viewed again.” This seems consistent with the time expended by the officers in the review. Constable McDougald testified that the officers did not keep a log of the tapes, their length, or what portion was reviewed. Based on their partial viewing, the OPP determined that nothing of a criminal nature was on the tapes and that they could be returned to Mr. Leroux.

Ron Leroux Signs the Quit Claim

On April 25, 1993, Constable McDougald met with Ron Leroux at the detachment regarding the firearms investigation. Mr. Leroux was charged with eleven firearms-related criminal offences and released. Malcolm MacDonald represented Mr. Leroux on these charges.

Constable McDougald testified that during this meeting, Mr. Leroux was advised that the OPP was prepared to return the videotapes to him. Mr. Leroux told Constable McDougald that he had found the tapes in a dumpster at a campground and had taken them because he didn’t want them to fall into the hands of children. According to Constable McDougald, Mr. Leroux was emphatic that he did not want the videotapes back. Constable McDougald explained to Mr. Leroux that if he signed a quit claim on the property report, the tapes would be destroyed.

Mr. Leroux testified that he found his residence in a mess when he returned home in the spring of 1993. He spoke to Ken Seguin, with whom he had left a key. Mr. Seguin told Mr. Leroux that he had gotten Mr. Leroux in a lot of trouble because he had hidden a brown suitcase full of tapes in Mr. Leroux’s house and the police had found them. Mr. Leroux testified that Ken Seguin was desperate to get the tapes back because they would “destroy ... reputations.”

Mr. Leroux went on to testify that he made up the story about finding the tapes in the dumpster and advised the officer that he wanted the tapes back. He said that the officer refused to return them. Mr. Leroux testified that he signed a document that he thought was a release to get the videos back but was then advised that the police were going to destroy the tapes.

This testimony, however, is inconsistent with some of Mr. Leroux's previous statements, in which he says he did not speak to Mr. Seguin about the tapes until after he had signed the quit claim. Accordingly, I am inclined to agree with Constable McDougald's version of the events leading up to the signing of the quit claim.

Mr. Leroux signed the quit claim on April 25, 1993. Unfortunately, the form does not specify who discussed the matter with Mr. Leroux and did not require a witness to his signature. Constable McDougald's notes do not refer to any discussion with Mr. Leroux regarding the tapes, and, as previously mentioned, Staff Sergeant McWade did not have his notes available to assist him.

Constable McDougald testified that the property report with the signed quit claim would have been put back in the filing system to be processed. He had no further involvement with the process.

Destruction of the Videotapes

In his will-state and in the statement he provided to Project Truth officers on December 11, 1998, Constable McDougald stated that he was advised by Staff Sergeant McWade on May 4, 1993, that the detachment caretaker had destroyed all the tapes and the suitcase by burning them in a forty-five-gallon drum on that same date. He testified at this Inquiry that he did not remember the specific conversation but did recall being advised by Staff Sergeant McWade that the suitcase and twenty-two videotapes had been destroyed locally.

The caretaker, Arthur Lalonde, testified that he could not recall ever being involved in burning videotapes in his entire career. He testified that he had been asked by officers from time to time to destroy property by fire. He testified that whenever that occurred there would be an officer present who would stay with him until the item was completely destroyed.

In his statement to the Project Truth officers on February 4, 1999, Staff Sergeant McWade did not specify, nor was he asked, who actually destroyed the tapes, simply stating, "Some time after that, they were destroyed by burning in a fire barrel behind the Lancaster Detachment." In his evidence at this Inquiry, Staff Sergeant McWade testified that he personally destroyed the videotapes: "I'm the one who put them in the fire and personally burned them. I did not leave until they were completely on fire." He had no specific recollection of whether the caretaker, Mr. Lalonde, was present. He could not recall whether he had

started the fire himself or whether any accelerant had been used. He had no specific recollection of retrieving the items from the property room.

A note on the property report by Staff Sergeant McWade says that the materials were “destroyed by fire.” There is no further information to indicate the process of the destruction, the exact time and date, or who witnessed the destruction. Staff Sergeant McWade, in his testimony, stated that his signature indicated only that he gave the order for destruction, and does not provide any assistance as to who actually destroyed the materials.

Staff Sergeant McWade acknowledged in his testimony that it might be helpful to have a section on the property report to note who actually disposed of the property. I agree. I am troubled both by the lack of record keeping with respect to the destruction of property and by the inconsistency of the evidence regarding who destroyed the tapes and how this was accomplished. In particular, I have difficulty accepting that the Detachment Commander would personally attend to the destruction of property by fire.

Poor Record Keeping Fuels Rumours

As noted above, the seizure of these tapes has garnered significant attention. Some individuals have asserted that these videotapes contained proof of group pedophilic activity in the Cornwall area. I neither heard nor saw any evidence to suggest that the seized videotapes were of this nature (nor that a copy of the tapes continues to exist today).

All of the OPP officers involved in the search, seizure, and apparent destruction of the videotapes denied having any knowledge of rumours regarding wrongdoing on the part of Ken Seguin or any connection between him and Ron Leroux.

The viewing or partial viewing of the tapes by the OPP officers was insufficient to determine whether they contained evidence of criminal activity. I find that Staff Sergeant McWade failed in his managerial duties by not requiring the investigators under his supervision to view the seized tapes in their entirety.

Whether or not the seized tapes were anything more than homosexual pornography cannot be definitively confirmed given the likely destruction of these tapes in 1993. It is unfortunate that the OPP officers involved did not handle the videotapes in a more thoughtful and thorough manner. The relative lack of documentation, including the lack of a witness to the quit claim execution, the lack of a witness to the alleged destruction of the videotapes, and the omission on the return to justice form, along with the incomplete viewing of the tapes by a local officer who was reluctant to do so rather than by Project P staff, are all causes of concern.

Some of these issues can be addressed through the implementation of new policies and protocols. As such, and if not already in place, I recommend that quit

claim forms require a witness signature; that at least two people be present for the complete destruction of property; that time, date, and method of destruction be recorded along with both witnesses' signatures; and that the viewing of tapes with suspected criminal activity be better itemized and then archived for future reference. As has been clearly demonstrated in this case, a lack of transparency and poor record keeping can fuel rumours and must be avoided.

Investigation of Ken Seguin's Sudden Death

Ken Seguin was found dead in his home on November 25, 1993. The facts surrounding the discovery of Ken Seguin's body, and those leading up to the discovery, are set out in detail in Chapter 5, "Institutional Response of the Ministry of Community Safety and Correctional Services."

The death was investigated by Detective Constables Randy Millar and Chris McDonell of the Lancaster Detachment of the Ontario Provincial Police (OPP). During this investigation, these officers learned that David Silmsers alleged that Mr. Seguin had sexually abused him.

As discussed in detail in Chapter 6, on the institutional response of the Cornwall Community Police Service, in December 1992 Mr. Silmsers came forward to the CPS and alleged that he had been abused by both his probation officer, Ken Seguin, and a priest, Father Charles MacDonald. The Cornwall Police Service (CPS) investigated the allegations against Father MacDonald but not Mr. Seguin. In September 1993, the investigation into Father MacDonald was closed after Mr. Silmsers signed an illegal \$32,000 settlement with the Diocese of Alexandria-Cornwall that required him to drop his criminal complaint against the priest.

The circumstances surrounding Mr. Seguin's death became the subject of considerable rumour and innuendo during the 1990s. I focus here on the quality and scope of the investigation, including the treatment of the Seguin family by Detective Constables Millar and McDonell.

Discovery of Ken Seguin's Body

On November 25, 1993, OPP Constable Patrick Dussault attended at Ken Seguin's home at the request of Ken Seguin's supervisor at the Ministry of Correctional Services (MCS), Area Manager Emile Robert, who was concerned about Mr. Seguin. Mr. Robert and one of his colleagues were at the residence when Constable Dussault arrived. The three men looked through the windows but were unable to enter the home. It was decided that if Mr. Seguin was not at work the following morning, Mr. Robert would notify the OPP, which could take appropriate steps. Constable Dussault noted advising Staff Sergeant Jim McWade and Sergeant Andrew Vanderwoude.

Ken Seguin's neighbours, Ron and Cindy Leroux, discovered his body later that afternoon. Mr. Leroux arrived home shortly before 3:00 p.m. His wife told him that numerous cars had been coming and going from Mr. Seguin's residence. Ron and Cindy Leroux entered Mr. Seguin's home using a spare key and found his body in the bathroom. Ms Leroux called 911, but not until after Mr. Leroux had retrieved Mr. Seguin's personal phone book, called Father Charles MacDonald, and left him an angry message blaming him for Mr. Seguin's death. Mr. Leroux's actions, including his retention of the phone book, are described in more detail in Chapter 5.

The OPP Are Notified and Attend the Scene

The first OPP officers to attend the scene were Constable Dussault and Sergeant Vanderwoude. According to Constable Dussault's notes, they arrived at 3:30 p.m. Ron and Cindy Leroux were at Ken Seguin's home when the officers arrived, and Constable Dussault took a brief written statement from Ron Leroux describing his interactions with Mr. Seguin the previous day. While the Constable was taking Mr. Leroux's statement, C-8 arrived at the scene and left shortly thereafter.

Detective Constable Millar became involved when Staff Sergeant McWade advised him of a suspicious death. Detective Inspector Millar testified that he and Detective Constable McDonell were assigned to the investigation of the death because they were the only officers that did this type of work in the Lancaster Detachment. Detective Constable Millar was the lead investigator and had previously investigated suicides and sudden deaths.

Detective Constables Millar and McDonell arrived at the scene shortly after 4:00 p.m. The officers testified that any sudden death is treated as suspicious until it is ruled otherwise. As a result, the proper procedure was to treat the matter as a homicide until homicide was ruled out. Accordingly, Detective Constable Millar gave instructions for Constable Dussault to secure the scene. This meant ensuring that no one entered the house other than those with reason to be there, such as the Coroner.

The Coroner arrived at the scene at approximately 4:00 p.m. Detective Inspector Millar testified that typically when a Coroner arrives he or she declares death, orders an autopsy, and then gives the police the authority to search for items that would help explain what caused the death.

Seguin Family Members Attend the Scene

Doug Seguin, Ken's brother, learned of Ken Seguin's death when he received a telephone call from Cindy Leroux that afternoon. He called his wife, Nancy, and

his brother, Keith. Doug and Nancy Seguin then proceeded to Ken Seguin's residence. The OPP officers at the scene offered their condolences and asked if he wanted to go up and see Ken Seguin. Keith Seguin arrived at the scene later, and the Seguins were asked to leave until the OPP had finished its investigation.

Detective Constable McDonell testified that he spoke with members of the Seguin family that day, including Doug, Keith, and their father. He did not, at that time, take statements from them. Detective Constable McDonell had known Ken Seguin for twenty years in Mr. Seguin's capacity as probation officer.

Early Determination That Death Was Self-Inflicted

Detective Inspector Millar testified that, formally, the determination of suicide came after the autopsy, but, informally, the examination of the scene by the officers suggested that Ken Seguin's death was self-inflicted. This is consistent with what the OPP told Mr. Seguin's employer.

Once advised by his officers of Ken Seguin's death, Staff Sergeant McWade called Emile Robert. Mr. Robert testified that he received the call from the OPP shortly after he returned to the office from checking Mr. Seguin's residence. Staff Sergeant McWade told Mr. Robert that Ken Seguin was deceased and that his death appeared to be suicide.

Detective Constable Randy Millar Takes Statement From Ron Leroux

On the afternoon that Ken Seguin's body was discovered, Detective Constable Millar interviewed Ron Leroux in his cruiser for about thirty-five minutes. The statement covered information about Mr. Seguin and Mr. Leroux's activities the night before and how Mr. Leroux came to discover Mr. Seguin's body. Detective Constable Millar also asked about Mr. Seguin's sexual tendencies and further asked, "Do you think maybe Ken was in love with you and was depressed because you got married and now you are going to Maine?" Mr. Leroux answered that Mr. Seguin had never made any advances toward him.

Significantly, Detective Constable Millar's notes of the interview indicate that Mr. Leroux did not advise him that David Silmsen had made allegations of sexual abuse against Mr. Seguin, that Mr. Silmsen was attempting to negotiate a civil settlement with Mr. Seguin through Malcolm MacDonald, nor that Mr. Silmsen had called Mr. Seguin about the civil settlement the night before his death. The interview notes also do not refer to Mr. Leroux's subsequent allegation that the videotapes seized from his home in February 1993 were placed there by Mr. Seguin. Mr. Leroux testified that he spoke to Detective Constable Millar for five to ten minutes in his car and offered little information because of his distrust of police officers.

According to Mr. Leroux, Detective Constable Millar said he didn't want Mr. Leroux's wife present for the interview. Mr. Leroux testified that Detective Constable Millar said, "It's going to go like this. You and Ken were lovers. You got married, and he killed himself." Mr. Leroux then kicked open the car door and Detective Constable Millar told him to get the hell out of the car and that he would deny the whole thing.

In relation to the different accounts of this interview, I prefer the evidence of the officer. That said, I believe that the suggestion made by Detective Constable Millar regarding Mr. Seguin's motive for suicide, as reported in the officer's notes, was inappropriate in the situation.

Detective Constable Randy Millar's Knowledge of Allegations Against Ken Seguin

Later that evening, Detective Constables Millar and McDonell picked up Emile Robert and went to Ken Seguin's office to search for a suicide note. The officers checked Mr. Seguin's office and desk but did not locate a note. Mr. Robert testified that during this time, he told the officers that there was a rumour that Mr. Seguin was being criminally investigated.

Detective Inspector Millar testified that, before the investigation involving Mr. Seguin's death, he was not aware of allegations of a sexual nature against Mr. Seguin by David Silmsen. He had heard through the grapevine of a \$32,000 settlement involving Father Charles MacDonald and Mr. Silmsen but had not paid much attention to it.

Detective Constable Randy Millar's Contact With Constable Perry Dunlop

Detective Inspector Millar also testified that, around this time, he was starting to have concerns about CPS Constable Perry Dunlop. He knew the Constable from working with him on a joint forces operation in either 1991 or 1992. Constable Dunlop had spoken to Detective Constable Millar about the \$32,000 settlement, a cover-up, and a ring of pedophiles. Detective Inspector Millar described Constable Dunlop as being "infatuated" with these ideas, which caused him concern.

There is some indication that Detective Constable Millar was in contact with Constable Dunlop during his investigation of Ken Seguin's death. In his will-state, Constable Dunlop recalls Detective Constable Millar approaching him during dinner at a restaurant on November 25, 1993, to tell him about Mr. Seguin's death and ask for a copy of Mr. Silmsen's statement to the CPS. Helen Dunlop also testified that this meeting took place. Detective Inspector Millar does not remember

the meeting happening and testified that he could not see why it would have, since he was going to get the statement from the CPS.

On November 29, 1993, Constable Dunlop met with Greg Bell of the Children's Aid Society. According to Mr. Bell's notes from the meeting, Constable Dunlop had told Detective Constable Millar that Mr. Bell was investigating the Silmsers case. Constable Dunlop told Mr. Bell that Detective Constable Millar would probably want to speak with him regarding Mr. Seguin's death. I therefore conclude that Detective Constable Millar had contact with Constable Dunlop during his investigation.

Detective Constable Randy Millar Attends Cornwall Police Service

On the morning of November 26, 1993, Detective Constable Millar attended the CPS station and spoke to Staff Sergeant Luc Brunet and Staff Sergeant Garry Derochie while Detective Constable McDonnell went to the autopsy. Detective Constable McDonnell joined them a little later but did not have any recollection of the substance of the meeting. The officers discussed the CPS investigation relating to Mr. Seguin and Father MacDonald.

According to Detective Inspector Millar, the CPS officers told him "in a nutshell" about the allegations made by David Silmsers. He was advised that Mr. Silmsers wanted to proceed with an investigation of only Father MacDonald first because that was all he could handle at once. Detective Constable Millar obtained copies of statements and reports generated by the investigation. Staff Sergeant Derochie noted that the OPP officers were provided with copies of Constable Heidi Sebalj's case history, Mr. Silmsers's statement, and Sergeant Ron Lefebvre's rough notes.

As discussed in Chapter 6, Detective Inspector Millar recalled being advised that Mr. Silmsers's statement appeared truthful but that the Cornwall police felt corroboration was required on the statement due to Mr. Silmsers's lengthy criminal record, which included crimes of deceit.

Detective Constable Millar also learned of the November 24, 1993, call from Mr. Silmsers to Staff Sergeant D'Arcy Dupuis that I previously discussed in Chapter 6, wherein Mr. Silmsers said that in the event something happened to him, the police should investigate Mr. Seguin and Father MacDonald. In the course of the meeting, Constable Sebalj joined the officers and said that she had just received a call from Mr. Silmsers, who had heard about Mr. Seguin's suicide and was upset.

In Staff Sergeant Derochie's notes of the meeting, he wrote that it was obvious to all present that Mr. Silmsers's threats were most likely the reason Mr. Seguin took his own life.

Offence of Extortion Considered

After meeting with the CPS, Detective Constables Millar and McDonell met with David Silmsers at his residence in Bourget for about two hours. Detective Constable Millar took a statement from Mr. Silmsers in which he recounted the events of the past year. Mr. Silmsers told the officers that he was trying to negotiate a settlement from Ken Seguin through Malcolm MacDonald and that he was seeking \$100,000 or he would sue the Ministry of Correctional Services.

Mr. Silmsers testified that during the interview he was told that he was being investigated for the possible offence of extortion. The officers do not recall mentioning extortion. However, it is clear that the possibility of extortion was contemplated, at least by Detective Constable Millar, in the course of the death investigation. In the occurrence report he prepared, he wrote:

Their [sic] is no doubt that David Silmsers was accusing Ken Seguin of sexually assaulting him in years previous. David Silmsers telephoned Ken Seguin the night prior to finding Seguin—deceased and threatened to sue him if he did not make settlement by Fri 26 Nov 93. After investigation and autopsy there is no foul play suspected in Seguin's death. Extortion does not exist against Silmsers as per 346(2) CCC.

Detective Inspector Millar testified that he stood by his findings to the present. It was his view that Mr. Silmsers had threatened to sue Mr. Seguin but that such a threat did not amount to extortion pursuant to the *Criminal Code*, which explicitly states that threatening to institute a civil action or liability does not amount to extortion.

Detective Inspector Millar testified that the occurrence report referred to above was completed on November 26, 1993, except for a final entry relating to communication with the Ministry of Transport dated November 29, 1993. This suggests that his findings with respect to possible extortion were made as of November 26, 1993. Detective Constable McDonell was also involved in the preparation of this report and believed the determination that there was no extortion and no foul play happened “down the road,” after November 26, 1993. In any case, the two officers agreed that a possible offence of extortion was ruled out by November 29, 1993.

Officers Meet With Seguin Family

On December 15, 1993, Detective Constables Millar and McDonell met with members of the Seguin family, who had requested an update on the investigation. This was the first contact Detective Inspector Millar recalled having with the

Seguin family since the death. Detective Inspector Millar and Doug Seguin provide different accounts of the meeting.

Detective Inspector Millar did not have detailed notes on the meeting but testified that he recalled telling the family that Ken Seguin had committed suicide and that he had been told Mr. Seguin was homosexual. Detective Inspector Millar also testified that he told the family that he believed Ken Seguin had committed suicide because Mr. Silmsers wanted money and had threatened to sue Mr. Seguin for sexually assaulting him a number of years ago. Detective Inspector Millar said the family members were very upset and did not appear to know any of this information. He said he told them the truth and did not tone it down.

In notes prepared by Doug Seguin in 1997, he claimed that during this meeting, Detective Constable Millar “gave us an atrocious description of what they said my brother and others had been doing to young boys.” Detective Inspector Millar did not agree with this characterization of the meeting. He did not recall referring to young boys aside from his reference to Mr. Silmsers’s allegations.

Doug Seguin testified that during the meeting, Detective Constables Millar and McDonnell also told the family about allegations of sexual abuse made against Milton MacDonald and about finding videotapes at Ron Leroux’s that he said belonged to Ken Seguin.

It seems clear that these two topics would not have arisen during the December 15, 1993, meeting with the Seguin family. Detective Constable Millar did not learn of the recent allegations made against his father-in-law, Milton MacDonald, until February 1994. There is no indication that the OPP were aware of Mr. Leroux’s claim that Ken Seguin placed the tapes in his house until March 1994.

The End of the Investigation

Following Detective Constable Millar’s apparent determination by November 26, 1993, that extortion could not be established, he appears to have taken only two further investigative steps: a meeting with Emile Robert on December 17, 1993, and an interview of Malcolm MacDonald on December 21, 1993.

Detective Inspector Millar testified that, in his mind, by the time of his interview with Malcolm MacDonald, the extortion investigation was over. He thought that he and Detective Constable McDonnell must have been ordered to interview Mr. MacDonald but could not recall by whom.

Detective Constables Millar and McDonnell interviewed Mr. MacDonald on December 21, 1993. Mr. MacDonald provided his version of the events from the time of Mr. Silmsers’s complaint leading up to the suicide. He reported that Mr. Silmsers had referred to bringing a complaint to the Ministry, as opposed to a civil action. He also said he had been encouraging Ken Seguin to take action against Mr. Silmsers for extortion. Mr. MacDonald provided the officers with

notes apparently prepared by Mr. Seguin at Mr. MacDonald's request, regarding his dealings with Mr. Silmsier. Detective Inspector Millar could not recall what he did with those statements. Detective Constable McDonell had no recollection of receiving the statements prepared by Ken Seguin and said that he saw them only in preparation for this Inquiry.

According to CPS Staff Sergeant Luc Brunet, on January 7, 1994, Detective Constable McDonell advised him that the OPP had a statement in Ken Seguin's own handwriting and he would try to make it available to the CPS. Staff Sergeant Brunet recalled reading the statement. The Staff Sergeant noted that Detective Constable Millar delivered a package to him on January 12, 1994.

Detective Constable Chris McDonell was eventually assigned to assist Inspector Fred Hamelink in the subsequent extortion investigation, which will be addressed in the next section of this chapter.

While the sudden-death investigation is not one of sexual abuse involving young people, it did involve Ken Seguin and is therefore relevant to my mandate. Based on the evidence I have reviewed, I find nothing untoward or unusual about the officers' conclusions.

Investigation of David Silmsier for Extortion

Ken Seguin died on November 25, 1993, and the investigation of his death is described in a previous section of this chapter. On January 28, 1994, Ontario Provincial Police (OPP) Superintendent Carson Fougère met with Doug, Nancy and Keith Seguin, at their request, to discuss their concerns about that investigation. Following the meeting, an investigation was launched into the possible extortion of Ken Seguin by David Silmsier. In the course of this investigation, the officers involved obtained information relevant to Detective Inspector Tim Smith's concurrent investigations of sexual abuse by Father Charles MacDonald, conspiracy, and obstruction of justice, which are the subject of the next three sections of this chapter.

Meeting Between Superintendent Carson Fougère and the Seguin Family

Doug Seguin requested the meeting with Superintendent Fougère due to concerns he had after meeting with Detective Constables Chris McDonell and Randy Millar on December 15, 1993, regarding the investigation of his brother's death. The family expressed concerns about statements made by Detective Constables McDonell and Millar about Ken Seguin that may have "coloured" their investigation. Superintendent Fougère did not consider those expressions of concern to amount to complaints of misconduct on the part of the officers and as a result did not notify the Professional Standards Bureau.

While it appears Doug Seguin was of the view that he was making a complaint against the officers, he testified that he did not feel the need to follow up on it once an investigation into Mr. Silmsers was initiated.

According to Chief Superintendent Fougère, the family came to request charges of attempted extortion against Mr. Silmsers and a copy of the Lancaster OPP report on the death of their brother. Doug Seguin testified that he learned from Superintendent Fougère that Mr. Silmsers was going to be investigated for extortion.

Chief Superintendent Fougère's recollection was that following the meeting, he called the Criminal Investigation Branch (CIB) and asked Detective Superintendent Wayne Frechette to assign a Detective Inspector to conclude or take over the investigation. He testified that the investigation he requested was a re-investigation of the sudden death of Ken Seguin.

It is clear on the evidence that the investigation that was actually commenced as a result of Superintendent Fougère's call to Detective Superintendent Frechette was an investigation into David Silmsers for allegedly attempting to extort Ken Seguin. This is consistent with the instructions given to Detective Inspector Hamelink, the case manager, upon his assignment as well as with the letter written by Acting Inspector N.J. Duhamel to Detective Superintendent Frechette on February 2, 1994.

Assignment of Detective Inspector Fred Hamelink and the Investigating Officers

On February 1, 1994, Detective Inspector Fred Hamelink was dispatched by Detective Superintendent Frechette to Long Sault concerning allegations of extortion. Detective Inspector Hamelink had joined the OPP in 1969. By 1994, he had attained the rank of detective inspector and was assigned to the CIB at OPP headquarters in Orillia.

Detective Inspector Hamelink's role in the investigation was that of case manager. He was regularly briefed by, and regularly provided instruction to, the investigating officers. Ultimately, whether or not to lay charges at the conclusion of the investigation was Detective Inspector Hamelink's decision.

The day after his assignment, Detective Inspector Hamelink attended at the District Headquarters in Long Sault and was briefed by Detective Inspector Duhamel on the allegations. Detective Inspector Duhamel gave him Detective Constable Chris McDonell's name, and Detective Constable McDonell became the lead investigator in Detective Inspector Hamelink's investigation. The following day, Constable Don Genier was assigned to assist.

With respect to Detective Constable McDonell's assignment as lead investigator, Chief Superintendent Fougère testified that given the family's expressed concerns, the optics of assigning Detective Constable McDonell to the subsequent

investigation were poor. Detective Inspector Hamelink testified that had he been advised of the Seguin family's allegations regarding the conduct of Detective Constable McDonell, he might have addressed those concerns when he found out the officer was assigned to his investigation.

However, Detective Inspector Hamelink made it clear that he viewed Detective Constable McDonell as a seasoned and thorough investigator. He was not concerned by Detective Constable McDonell's work on the extortion investigation. According to Detective Inspector Hamelink, Detective Constable McDonell did not appear to have any predisposition to a particular outcome nor did he try to influence Detective Inspector Hamelink in deciding the results of the investigation.

In light of the Seguins' concerns, it may have been unwise to assign Detective Constable McDonell to the extortion investigation. That said, there is nothing in the evidence to suggest that he was biased or unprofessional in fulfilling his duties.

Coordination With Detective Inspector Tim Smith's Investigations

Around the time of Detective Inspector Hamelink's assignment, there were discussions between the Cornwall Police Service (CPS) and OPP about the need for further investigations with respect to David Silmsers' allegations of sexual assault by Father Charles MacDonald and possible criminal conduct relating to the illegal settlement entered into between the Diocese and Mr. Silmsers. Detective Inspector Tim Smith was assigned to conduct these investigations, the details of which are in the following three sections, on February 3, 1994.

Meeting of Detective Inspectors Tim Smith and Fred Hamelink

On February 8, 1994, Detective Inspectors Smith and Hamelink met in Bells Corners to exchange information. At some point, either at this meeting or subsequently, the officers discussed issues raised by their concurrent investigations. Detective Inspector Smith testified that he was concerned about proceeding with David Silmsers as a victim in one investigation and a suspect in another. He was also worried that, because both investigations were interested in some of the same people, the investigators would "trip over each other."

Meeting of Officers and Peter Griffiths

Following his meeting with Detective Inspector Hamelink, Detective Inspector Smith called Peter Griffiths, Director of Crown Operations, Eastern Region. They discussed the method of interviewing David Silmsers and whether he would have to be cautioned regarding possible extortion:

On February 21, 1994, the day before the interview with Mr. Silmsers, Detective Inspector Smith, Detective Inspector Hamelink, and their investigating officers

met with Mr. Griffiths. According to Constable Genier's notes, the meeting was approximately two and one-half hours long and was followed by a one-hour debriefing among the officers regarding follow-up on Mr. Silmsen.

Agreement That Detective Inspector Fred Hamelink Avoid David Silmsen

Detective Inspectors Smith and Hamelink discussed with Mr. Griffiths the need for coordination because Mr. Silmsen was both a complainant and a suspect in their concurrent investigations. Detective Inspector Smith suggested that he deal with Mr. Silmsen as a victim first, before Detective Inspector Hamelink approached Mr. Silmsen as a suspect. They agreed that Detective Inspector Hamelink would avoid Mr. Silmsen until Detective Inspector Smith had what he needed for his sexual assault investigation. As a result, Detective Inspector Hamelink's investigation "circled around getting all the background information they could, staying away specifically from David Silmsen."

At some point, it was agreed between the two officers that Detective Inspector Hamelink would watch Detective Inspector Smith's interview of Mr. Silmsen from behind one-way glass, while Detective Inspector Smith, at Detective Inspector Hamelink's request, would gently probe Mr. Silmsen with a few questions relevant to extortion. Mr. Griffiths testified that he was not aware of this arrangement between the officers.

Agreement to Exchange Crown Briefs

The two officers further agreed that once the investigations were complete, they would "compare notes" before delivering their Crown briefs to Peter Griffiths. As I discuss below, this agreement was not followed: Detective Inspector Hamelink submitted his brief without informing Detective Inspector Smith.

Interview of David Silmsen

Detective Inspector Smith and Detective Constable Michael Fagan interviewed Mr. Silmsen on the afternoon of February 22, 1994. Detective Inspector Hamelink watched the interview from behind one-way glass. Detective Inspector Smith did not caution Mr. Silmsen with respect to the allegations of extortion but did ask a few questions relating to the allegations "in passing" at the request of Detective Inspector Hamelink.

In response to Detective Inspector Smith's questions, Mr. Silmsen stated that he had been in contact with Ken Seguin's lawyer, Malcolm MacDonald, regarding a civil settlement and that he did not intend to bring another complaint to the police because "the police weren't doing nothing in the first place."

Detective Inspector Hamelink's team did not conduct its own interview of Mr. Silmsen. Detective Inspector Hamelink completed his investigation and took his brief to the Crown before Detective Inspector Smith finished his investigation. Based on the reply he received from the Crown, Detective Inspector Hamelink decided not to interview Mr. Silmsen. When asked during his testimony whether an interview should have been done, Detective Inspector Hamelink stated, "There's a lot of things that in hindsight should have been done."

Information Sharing Between the Investigations

In addition to David Silmsen, the investigations had other areas where potential witnesses and evidence overlapped. In some instances, Detective Constables Fagan and McDonnell conducted joint interviews, and in these cases, of course, both teams would be apprised of the evidence obtained. Where one team only conducted interviews, Detective Inspector Hamelink testified that it was his expectation that Detective Constables Fagan and McDonnell would have been sharing information. Detective Inspector Hamelink also testified that he did not have to explicitly instruct Detective Constable McDonnell to share information with Detective Constable Fagan because he was "seasoned enough to do it on his own." Detective Inspector Hamelink was satisfied that the information sharing occurred at the level of the investigating officers as opposed to at the level of the case managers.

However, Detective Constable McDonnell testified that he did not share information directly with the other team; instead, he would report it to Detective Inspector Hamelink. He testified that he did not know if Detective Inspector Hamelink was then sharing this information with the other team.

It was clearly Detective Inspector Smith's expectation that his team would be provided with all relevant information, either in the course of the investigations or through the final comparison at the conclusion of the investigations.

Investigative Steps of Extortion Investigation

Interviews with Cornwall Probation Office Staff

Between February 3 and February 17, 1994, Detective Inspector Hamelink's investigators took statements from staff at the Cornwall Probation Office. The staff members were questioned about what they knew of the events leading up to Ken Seguin's suicide. Some said they had heard rumours that Mr. Seguin was under investigation. However, some of them told the officers they were unaware of discussions between Mr. Silmsen and Mr. Seguin regarding Mr. Silmsen's allegations of abuse.

Statement From Jos van Diepen

Detective Constable McDonell and Constable Genier had a lengthy interview with Jos van Diepen on February 14, 1994.

Mr. van Diepen provided information regarding a former probation officer, Nelson Barque, in his statement. In particular, he claimed that he had “gone through Nelson’s desk and saw a paper back of men in sexual positions.” Mr. van Diepen told the officers that Mr. Barque’s career had ended when he resigned following a complaint that he was sexually involved with one of his probationers.

Mr. van Diepen also provided information about a probationer who Mr. Barque had suggested live with Father Charles MacDonald. The probationer told Mr. van Diepen that he didn’t want to live there, allegedly reporting that Father MacDonald “was a queer—he liked little boys.” According to Mr. van Diepen, the probationer said that he woke up to find Father MacDonald sitting on his bed but wouldn’t say anything more.

Mr. van Diepen also mentioned hearing about a dinner party at which Father MacDonald sodomized Mr. Silmser and said Mr. Seguin was there and did nothing about it.

In his statement, Mr. van Diepen also provided information about who in the community was friends with, or spent a lot of time with, Mr. Seguin. Among others he named Gerald Renshaw, Ron Leroux, C-8, Malcolm MacDonald, and Father MacDonald.

Clearly this statement contained information relevant to Detective Inspector Smith’s investigation and should have been shared with him. It referenced Father MacDonald both in relation to allegations of inappropriate sexual conduct and as a close friend of Mr. Seguin. In this regard, it was consistent with Mr. Silmser’s claims. Unfortunately, it appears that the statement was not provided to Detective Inspector Smith either by the investigating officers or by Detective Inspector Hamelink, who reviewed the statement on June 1, 1994. Detective Inspector Smith had no recollection of the statement and it was not included in the Crown brief prepared by Detective Inspector Smith regarding the allegations against Father MacDonald.

Other Information Obtained About Nelson Barque

In addition to Mr. van Diepen, two other probation office staff members interviewed by Detective Inspector Hamelink’s team mentioned past allegations against Nelson Barque. In Emile Robert’s statement of February 15, 1994, he told Detective Constable McDonell and Constable Genier that when he joined the office, Ms Marcelle Léger was filling him in on his staff and, according to

Constable Genier's notes, she "advised him on Nelson Barque and that there was possibly another officer involved in sexual activities with clients."

Two days later, the two officers interviewed Stewart Rousseau, who in his statement said that Mr. Barque got in trouble when he became "involved" with one of his probationers and the Ministry had him resign.

Detective Inspector Hamelink's notes show that he reviewed these statements on May 16, 1994. However, he did not follow up on the information provided regarding Mr. Barque. As I understand Detective Inspector Hamelink's evidence, this was because he did not see any connection between those allegations and his investigation into extortion. Similarly, Detective Constable McDonell did not view Mr. Barque as relevant to the investigation and did not follow up with the CPS regarding the information it received about Mr. Barque.

I agree that the information provided about Mr. Barque was not related to the extortion investigation. It did, however, indicate potential sexual misconduct on the part of Mr. Barque and warranted further investigation. I find that Detective Inspector Hamelink should have ensured such follow-up occurred. This was another missed opportunity to uncover criminal activity by a former probation officer.

In 1995, Mr. Barque was charged and pleaded guilty to indecent assault and gross indecency in relation to incidents involving a former probationer. He was again charged with indecently assaulting former probationers in 1998 and committed suicide soon after. These charges are discussed in more detail in later sections. I mention them here only to note the extent of the wrongdoing the OPP might have uncovered had it taken appropriate action in 1994.

Meetings With the Children's Aid Society (CAS)

Detective Constable McDonell and Constable Genier met with Greg Bell of the CAS on February 8, 1994, and twice on February 14, 1994. Over the course of those meetings, the OPP and CAS shared information, and Mr. Bell provided the officers with a transcript of the statement David Silmsen gave to the CAS on November 2, 1993, a copy of the CAS investigation strategy, and a copy of case note pages where Ken Seguin's name appeared. On this last item, Mr. Seguin's name was highlighted in yellow and an entry where Malcolm MacDonald was referenced as a possible perpetrator was blanked out.

Detective Inspector Smith's team later made its own requests for information from the CAS. Again, it seems that full information may not have been shared between the two OPP investigations. In particular, Detective Inspector Smith testified that he did not have a copy of David Silmsen's November 2, 1993, statement to the CAS when he interviewed Mr. Silmsen on February 22, 1994.

Interviews With Friends and Neighbours

Early in the investigation, Detective Inspector Hamelink's team conducted interviews of friends and neighbours of Ken Seguin, including Gerald Renshaw, C-8, and Fern Touchette.

Detective Constable McDonell and Constable Genier interviewed Mr. Renshaw on February 9, 1994. Although Mr. Renshaw later reported allegations of being sexually abused by Mr. Seguin, he did not disclose this claim to the officers. He testified that he knew Detective Constable McDonell and did not trust him. He felt that the officer had hassled him in the past and was looking for ways to put him in jail. Mr. Renshaw testified, "I didn't want help from them [the OPP]; I didn't want them anywhere near me."

Within the statement taken from Mr. Renshaw, there is reference to Father MacDonald. He stated that he moved out of Mr. Seguin's residence because he didn't like the fact that Father MacDonald "would always go over with guys." This statement was not listed in any of the materials that Detective Inspector Smith submitted to the Crown and thus was probably not provided to him.

Detective Constable McDonell and Constable Genier interviewed C-8 on February 11, 1994. C-8 testified that he did not want to get involved so he did not tell the officers much. In fact, he told the officers that he "never heard of that David Silmsen guy, until [he] read it in the paper after Ken's death." In his testimony, C-8 stated he knew who Mr. Silmsen was and that he wanted money from Ken Seguin.

On March 28, 1994, Detective Constables McDonell and Fagan jointly conducted an interview of Ron Leroux at his residence in Maine. Like Mr. Renshaw and C-8, Mr. Leroux was not completely forthcoming in his interview.

In his statement, Mr. Leroux referred to Ken Seguin receiving a phone call and being distressed, but he did not reveal the full knowledge that he later claimed to have about Mr. Silmsen's demands for money from Mr. Seguin. Nor did he advise the OPP officers of any knowledge he had about Mr. Seguin having sexual relationships with probationers. It was in this statement that Mr. Leroux first told the police that the tapes found in his home in February 1993 had been put there by Mr. Seguin.

Interview of Malcolm MacDonald

On May 12, 1994, Detective Inspector Hamelink and Detective Constable McDonell met with Malcolm MacDonald. Mr. MacDonald was a key witness in the extortion investigation, because he was a friend of Ken Seguin, had acted as his lawyer in discussions with David Silmsen, and had obtained written statements from Mr. Seguin regarding his contact with Mr. Silmsen. As the friend and legal counsel of Father Charles MacDonald and because of his involvement

in the illegal settlement agreement, Mr. MacDonald was also a key witness in Detective Inspector Smith's sexual assault, conspiracy, and obstruction of justice investigations.

Despite the overlap in interests, Detective Inspector Hamelink did not see the need to coordinate with Detective Inspector Smith before interviewing Mr. MacDonald. He testified that he expected that Detective Constable McDonnell would share information from the interview with Detective Constable Fagan the next time they met.

The interview lasted approximately one hour and included a discussion of Mr. MacDonald's representation of Father MacDonald with respect to Mr. Silmsen's complaint, an area that would clearly have been of interest to Detective Inspector Smith. Mr. MacDonald chose not to provide a statement at the interview, but he delivered a written document to the investigators the following day. Detective Inspector Hamelink testified that he did not give this statement directly to Detective Inspector Smith but that it would have formed part of his Crown brief (which, as noted above, Detective Inspector Smith did not receive).

There was also information recorded in Detective Inspector Hamelink's notes of the meeting that was not included in the statement prepared by Mr. MacDonald. One portion of the notes refers to Mr. MacDonald reviewing his file in the presence of Detective Inspector Hamelink:

I then asked him if he had any notes of any conversations he had had with David Silmsen. He unlocked his desk & from the top left hand drawer (his left) he removed a manila file folder which contained numerous documents, some with a red seal on the bottom of the page, newspaper clippings, an envelope with a handwritten statement which he said was Ken Seguin's. Malcolm MacDonald looked through this file. He then closed the file.

MacDonald when asked if he had any notes in this file about conversations between himself and David Silmsen said he didn't think so but there may be in another file which he kept. (Location of this file wasn't disclosed.)

The information that Mr. MacDonald had a file on the matter and notes on his conversations with Mr. Silmsen should have been of critical importance to both Detective Inspector Hamelink's and Detective Inspector Smith's investigations. Certainly, one could assume that a lawyer would have a file and would have made notes of his conversations. Because Detective Inspector Hamelink had actually confirmed the existence of the file and notes, he might have established grounds for a search warrant with respect to Detective Inspector Smith's

investigations into conspiracy and obstruction of justice. In my view, this information was of such significance that Detective Inspector Hamelink ought to have ensured that it was immediately brought to his colleague's attention rather than relying on his expectation that it would make its way to Detective Inspector Smith through Detective Constables McDonell and then Fagan.

Also, Detective Inspector Smith ought to have had the opportunity to review Detective Inspector Hamelink's notes and Mr. MacDonald's statement prior to his own interview of Mr. MacDonald, which took place in October 1994 and is described in a later section, "Obstruction and Conspiracy Investigations."

Interviews of CPS Officers

Constable Genier and Detective Constable McDonell spoke to Constable Heidi Sebalj, the officer who investigated David Silmser's complaint to the CPS, on February 3, 1994, for almost an hour regarding her investigation. Detective Inspector Hamelink then spoke with Constable Sebalj on June 9, 1994. On June 13, 1994, Detective Inspector Hamelink attended CPS and spoke to Acting Chief Carl Johnston and Deputy Chief Joseph St. Denis. He asked for a statement from Constable Sebalj regarding any conversations she had had with Mr. Silmser regarding sexual assault charges being laid against Ken Seguin. Acting Chief Johnston said they would have to get a legal opinion because there was a pending lawsuit.

On July 20, 1994, Detective Inspector Hamelink attended to interview Constable Sebalj. Detective Inspector Hamelink testified that he did not think it would be helpful to him to get any information or update from Detective Inspector Smith with respect to Constable Sebalj. The statement he took from Constable Sebalj refers to the original investigation and the involvement of Chief Claude Shaver and Sergeant Ron Lefebvre, matters that would have been relevant to Detective Inspector Smith's investigation. The statement does not appear in any of Detective Inspector Smith's materials submitted to the Crown.

Detective Inspector Hamelink's team also obtained statements that were prepared by Staff Sergeant Luc Brunet and Sergeant Lefebvre, who were also involved in the David Silmser case. It appears that only Staff Sergeant Brunet's statement was provided to Detective Inspector Smith and included in his brief on the conspiracy investigation.

Interactions With Seguin Family During the Investigation

One of the first steps taken by Detective Inspector Hamelink in his investigation was to meet with members of the Seguin family. On February 3, 1994,

Detective Inspector Hamelink spoke to Nancy Seguin and arranged to meet with her, Doug Seguin, and Keith Seguin that afternoon. Following the three-hour meeting, Detective Constable McDonell took statements from each of the three family members. These statements do not appear to have been shared with Detective Inspector Smith.

Detective Inspector Hamelink and his officers had regular contact with members of the Seguin family through the course of their investigation. In a letter to Doug Seguin, the Chief Coroner wrote that his review of the case indicated that investigators spent a total of 83.5 hours with Seguin family members between November 25, 1993, and July 6, 1994. Detective Inspector Hamelink explained the contact he had with the family members as an attempt to ease their grief by sharing information:

... I was dealing with a grieving family, I was aware of that, a grieving family that had difficulty coming to terms with the death of a loved one, a brother and a brother-in-law. A grieving family that had difficulty coming to terms with the fact that there was community rumours about his alternate lifestyle. And a grieving family that had difficulty coming to terms with the fact that their brother was tied in some fashion to pedophilia.

Although Detective Inspector Hamelink had ongoing contact with several members of the family, he testified that Nancy Seguin came to see him most frequently. He said that she had difficulty coming to terms with the fact that Ken Seguin had killed himself and he tried to alleviate her concerns about the death. In particular, the officer assisted in providing her an opportunity to review photographs of the death scene, and later contacted the Coroner, the identification officer, and Detective Constable Randy Millar to provide answers to some of her questions.

In one meeting, Ms Seguin provided Detective Inspector Hamelink with two letters written to Ken Seguin's mother following his death, one from Father MacDonald and one from Mark Woods. Detective Inspector Hamelink did not recall taking copies of the letters and did not advise Detective Inspector Smith that Ms Seguin had a letter written by Father MacDonald in her possession. I did not have the benefit of reviewing those letters.

Detective Inspector Hamelink did advise Nancy Seguin to contact Detective Inspector Smith regarding information she had obtained when she met with Bishop Eugène LaRocque in January 1994. She did so and met with Detective Inspector Smith on March 8, 1994. This meeting will be discussed in the section "Obstruction and Conspiracy Investigations."

No Charges Laid in Extortion Investigation

On September 28, 1994, Detective Inspector Hamelink met with Detective Constable McDonell, who said that the Crown brief was complete. Arrangements were made to meet with Mr. Griffiths the following afternoon. There is no indication that Detective Inspector Hamelink made any effort to contact Detective Inspector Smith to compare information before meeting with Mr. Griffiths.

Detective Inspector Hamelink testified that the investigating officers assembled the brief on the extortion investigation. After he had read all the statements, he prepared the synopsis to be added to the brief as an outline of the investigation. Although Detective Inspector Hamelink testified that before he went to the meeting with Mr. Griffiths he had not formed an opinion, even tentatively, as to whether there were reasonable and probable grounds to lay a charge, it appears he had, because his synopsis states in conclusion, “At this time, the police investigation has failed to provide the evidence to substantiate a criminal offence of Extortion pursuant to Section 346.(1) [sic] of the Criminal Code.”

On September 29, 1994, Detective Inspector Hamelink met with Mr. Griffiths in his Ottawa office and presented him with the Crown brief and a verbal briefing. The officer received Mr. Griffiths’ opinion in a letter dated October 12, 1994. Mr. Griffiths’ conclusion was that there was not sufficient evidence to provide reasonable and probable grounds to support a criminal charge of extortion against David Silmsers. No charges were laid.

In his opinion letter, Mr. Griffiths noted that the only witness statement that provided any evidence of an extortion threat was the one from Malcolm MacDonald. It appears from this statement that the supplementary occurrence report of Staff Sergeant D’Arcy Dupuis was not included in the Crown brief. In that report, Staff Sergeant Dupuis described a telephone call he received from Mr. Silmsers on November 24, 1993, during which Mr. Silmsers told him that “if they don’t pay within the next 48 hours,” he would go to the press.

Detective Inspector Hamelink met with the Seguin family on December 19, 1994. According to his notes, the meeting was arranged the week before when the Detective Inspector called Doug Seguin and advised him of the Crown’s decision regarding charges. At the meeting, the officer read them the letter from the Crown attorney and explained its contents.

Insufficient Coordination and Information Sharing Among Investigators

Detective Inspector Hamelink was unable to explain why he did not follow through on the agreement to get together with Detective Inspector Smith before the officers jointly submitted their briefs to Mr. Griffiths. Detective Inspector Hamelink did state that he was being “fiscally responsible” by concluding the

investigation so that the investigating officers could go on to other investigations. This does not, however, amount to a reasonable explanation for not sharing his brief with Detective Inspector Smith and comparing information before submitting it to the Crown, as had been previously agreed.

It was clear from Detective Inspector Smith's testimony that he was relying on this agreement to ensure that he had full information prior to the submission of his brief to Mr. Griffiths. Detective Inspector Smith testified that he spoke to Detective Inspector Hamelink on the telephone some time after October 4 and expressed his displeasure that Detective Inspector Hamelink had submitted his brief in contravention of their agreement. Detective Inspector Hamelink testified that he was not aware that Detective Inspector Smith was displeased with his actions nor that he had reported his concerns to his supervisor.

I do not doubt Detective Inspector Smith's frustration in failing to receive Detective Inspector Hamelink's brief as planned. Nor do I condone the decision of Detective Inspector Hamelink not to share his brief with his colleague. I do question, however, whether Detective Inspector Smith could have made more of an effort at the time to remedy the situation. During his testimony, he could not recall, for instance, whether he spoke with Mr. Griffiths and asked him to look over the briefs together to ensure nothing was missed.

In any case, having reviewed the evidence, I find that there was insufficient coordination between Detective Inspector Hamelink's extortion investigation and Detective Inspector Smith's 1994 investigations. I point in particular to the failure to share information obtained in interviews with probation staff, Malcolm MacDonald, Gerald Renshaw, and the CPS officers.

Given the extent of overlap between the investigations and the evidence of common interest that was uncovered, Detective Inspector Hamelink should have taken steps to provide the relevant information to Detective Inspector Smith rather than relying solely on informal coordination between the investigating officers. Detective Inspector Smith also could have made greater efforts to provide Detective Inspector Hamelink with relevant information uncovered during his investigations. For example, he did not speak with Detective Inspector Hamelink about Detective Constable Fagan's interview with Father MacDonald, during which, as is described in a later section, "Re-Investigation of Father Charles MacDonald," he claimed Mr. Silmsen would often call him in a drunken state and was clearly after money.

The failure to share information is yet another missed opportunity. As I will discuss, Detective Inspector Smith testified that the issue of reasonable and probable grounds with respect to Mr. Silmsen's allegations against Father MacDonald was a very close call. He should have had all of the evidence available at the time before forming his opinion.

Commencement of Detective Inspector Tim Smith's 1994 Investigations

As previously discussed in Chapter 6, on the institutional response of the Cornwall Community Police Service, on January 6, 1994, a story broke in the regional media about David Silmsers' allegations against Father Charles MacDonald, the settlement he reached with Father MacDonald and the Diocese, and the decision by the Cornwall Police Service (CPS) to close its investigation into this complaint. In the days that followed, Acting CPS Chief Carl Johnston contacted the Ottawa Police Service and asked it to review the CPS investigation into the Silmsers matter, and to look into whether members of the CPS downplayed or concealed Mr. Silmsers' allegations.

The Ottawa Police Service found a number of deficiencies in the CPS investigation and recommended an outside police agency be brought in to re-investigate Mr. Silmsers' allegations and to investigate the events surrounding his settlement with Father MacDonald and the Diocese and the CPS decision to stop its investigation. Acting Chief Johnston asked the Ontario Provincial Police (OPP) to conduct this investigation. The details of the resulting investigations are described in the next two sections. However, before turning to those investigations, I think it useful to look briefly at the overall mandate under which they took place.

Communication Between Acting Chief Carl Johnston and Deputy Commissioner Ronald Piers

On January 28, 1994, Acting Chief Johnston wrote to Deputy Commissioner Ronald Piers following their telephone conversation earlier that day. In the letter, Acting Chief Johnston requested "the assistance of [the OPP] to conduct a completely new investigation of the allegation, as it appears to me that there were witnesses who were not interviewed," and because individuals other than David Silmsers had made allegations against Father Charles MacDonald.

A second letter, dated January 31, 1994, also appears to have been written following a telephone conversation between Acting Chief Johnston and Deputy Commissioner Piers during which they discussed the mandate of the OPP investigators. In his letter, Acting Chief Johnston suggests the OPP mandate be expanded. In particular, he asks that it cover media allegations of a conspiracy between the Cornwall police and the Catholic Diocese; reports of abuse at a group home in Cornwall; the possibility of an obstruction of justice investigation in relation to the David Silmsers settlement; and whether the CPS should proceed with an investigation of a local priest without cooperation from the victim.

A third letter from Acting Chief Johnston to Deputy Commissioner Piers, dated February 1, 1994, was written pursuant to a telephone call between them on the same day regarding “the specific mandate of your personnel conducting an investigation of the David Silmsers alleged sexual assault by a local priest.” Acting Chief Johnston writes:

I would request that your Police Service re-investigate the Silmsers matter in its entirety, the results of which, will respond to media allegations of a conspiracy between the Cornwall Police Service and the local Catholic Diocese, to effect a civil settlement with the alleged victim, Silmsers. Your investigation will also make a determination if the priest can or should be prosecuted, given the civil settlement to Silmsers and his refusal to testify.

Police Press Releases

The OPP issued a press release on February 2, 1994, regarding the CPS request that the OPP “conduct a new investigation into allegations of sexual assault against a local clergy which occurred approximately twenty years ago.” The release states that a member of the Criminal Investigation Branch has been assigned to the case and lists Superintendent Wayne Frechette as the contact. The release does not mention the other aspects of Acting Chief Johnson’s request, such as the allegations of conspiracy or obstruction of justice. This is a just one example of an incomplete press release. Others will be discussed in more detail in later sections of this chapter.

As described fully in Chapter 6, the Cornwall Police Services Board issued its own press release on the same day, which gave the incorrect impression that the Ottawa Police Service’s report (the Skinner Report) found little wrong with the CPS investigation of Mr. Silmsers’s complaint. In combination, these press releases failed to provide appropriate and accurate information to the public about the extent of the problems associated with the CPS investigation and the scope of the re-investigation by the OPP.

Assignment of Detective Inspector Tim Smith

On February 3, 1994, Detective Inspector Tim Smith was assigned by Superintendent Frechette to conduct an investigation in the Cornwall area. At the time, Detective Inspector Smith was at the Special Investigations Division of the Criminal Investigation Branch (CIB), Kingston Unit. Superintendent Frechette was the Director of the CIB and Detective Inspector Smith’s supervisor.

Detective Inspector Smith had been a member of the OPP since he joined as a probationary constable at the Barrie Detachment in 1967. He had extensive experience in criminal investigations, including investigations into allegations of police corruption, municipal corruption, and conspiracy to obstruct justice. From February 1990 to August 1997, he was assigned as the case manager in the investigations of St. Joseph's Training School for Boys, in Alfred, Ontario, and St. John's Training School, in Uxbridge, Ontario, both of which involved allegations of historical sexual abuse against young people.

When Detective Inspector Smith was assigned as case manager of the 1994 investigations in Cornwall, he continued in his role as case manager of the training school investigations. According to Detective Inspector Smith, the investigations themselves were mostly wound up but the prosecutions were ongoing. In addition, he was concurrently responsible for a number of other cases, including homicides. In my view, Detective Inspector Smith's workload was such that he had insufficient time to devote to the investigations in Cornwall. As I discuss in later sections, he was similarly overstretched during the Project Truth investigations.

In Detective Inspector Smith's notes from his call from Superintendent Frechette on February 3, 1994, he recorded that the OPP had been asked to do a complete re-investigation. He lists the "Questions to answer" as follows:

1. Was there a conspiracy between the Cornwall Police and Catholic Diocese to effect a civil settlement with alleged victim thus terminating criminal proceedings?
2. [W]as there obstruction of justice by lawyers who brought about civil settlement of assault victim which resulted in termination of police investigation upon consultation with local [C]rown attorney?
3. In absence of co-operation of alleged assault victim should Cornwall police consider proceeding with the prosecution against priest?

Detective Inspector Smith testified that these questions were dictated by Superintendent Frechette in their telephone call and that it was his understanding that they reflected the subjects of the investigation. Detective Inspector Smith understood that these questions had come from Acting Chief Johnston. Detective Inspector Smith also received a copy of the January 31, 1994, letter from Acting Chief Johnston to Deputy Commissioner Piers.

Detective Inspector Smith therefore understood that his investigation was threefold. First, he was being asked to re-investigate allegations of sexual assault perpetuated by Father Charles MacDonald.

Second, in relation to conspiracy allegations, Detective Inspector Smith testified that in his view he was not asked to look at any type of conspiracy or

collusion between the Cornwall police and the Diocese but rather just the specific allegation that the two institutions conspired to effect an illegal settlement with Mr. Silmser.

And third, with respect to obstruction of justice, Detective Inspector Smith testified that he understood that he was being asked to investigate the roles of the lawyers, specifically Malcolm MacDonald and Jacques Leduc. He was not yet aware of Sean Adams' involvement in the settlement. There was also a mention of the local Crown attorney in the January 31 letter, and so Detective Inspector Smith understood that he was to look at Murray MacDonald's actions as well. Murray MacDonald, the local Crown attorney, had prosecuted some of the cases resulting from the Alfred investigation, into the St. Joseph's Training School, and Detective Inspector Smith had worked with him on previous cases. The fact that Detective Inspector Smith was now assigned to investigate Mr. MacDonald may have amounted to a conflict of interest and at the very least created the appearance of a conflict.

Although the letter of January 31 refers specifically to the actions of the lawyers, and not their principals, Detective Inspector Smith testified that he saw the actions of the lawyers and principals as part and parcel of the same thing. He recognized that the lawyers would be acting on behalf of their clients and therefore the clients, including the Bishop and the Diocese, were also subjects in his investigation.

While the investigation with respect to the illegal settlement was initially framed in terms of an investigation of conspiracy to effect the settlement between the CPS and the Diocese and an investigation of obstructing justice with respect to the actions of the lawyers, Detective Inspector Smith testified that he would have considered any criminal activity relating to the settlement or anything that might have caused the illegal settlement to have been brought about as part of his mandate. However, a review of his investigations suggests that Detective Inspector Smith had a narrower view of his mandate.

Assignment of Detective Constable Michael Fagan

Detective Inspector Smith testified that he asked for one officer to assist him in these 1994 investigations and specifically requested Detective Constable Michael Fagan. He had worked with the Constable for three years on the Alfred investigation. He wanted Detective Constable Fagan on the team because he had a knack of getting along with people and was comfortable dealing with victims of child sexual abuse. Detective Inspector Smith described Detective Constable Fagan as being very empathetic and doing a wonderful job with the most difficult victims in the Alfred investigation. The Detective Inspector had heard that Mr. Silmser could be a difficult complainant to work with, which was

one of the reasons that Detective Inspector Smith wanted Detective Constable Fagan assigned.

Detective Inspector Smith felt that he would require the assistance of only one officer because he expected to take a hands-on investigative role himself. He was of the view that as an officer with a bit more experience and higher rank, it would be more appropriate for him to conduct the interviews with the Chief of Police, the Crown attorney, and the Bishop.

Comments on the Mandate of the Investigations

Having reviewed the evidence, I find that for the 1994 investigations assigned to Detective Inspector Smith, the OPP failed to define a mandate that would have provided appropriate direction and structure. As will be discussed in the section “Project Truth’s Mandate,” the mandate for the Project Truth investigations was similarly convoluted and ill-defined. In my view, weaknesses in both investigations can be attributed, in part, to their imprecise mandates.

It appears from the correspondence between Deputy Commissioner Piers and Acting Chief Johnston that the two discussed a number of issues and envisioned a broad and open-ended mandate for the OPP to investigate Mr. Silmser’s allegations and the associated settlement. However, this was ultimately communicated to Detective Inspector Smith as an assignment to conduct three separate and distinct investigations.

This is unfortunate, as a broad and global investigation would probably have been more efficient and effective. Such an investigation would have encouraged a re-investigation of the David Silmser matter in its entirety and brought to light any conspiracies or cover-ups in relation to the illegal settlement.

Instead, a significant portion of the investigation focused on the particular issue of whether the CPS had conspired with the Catholic Diocese to effect the civil settlement. Although this allegation, or rumours of it, was reported in the media, it is not clear that this should have been the focus of the investigation. A more appropriate focus of the investigation would have been the broader question of whether the CPS, or anyone else, was involved in ensuring that the allegations of sexual abuse did not become known.

Re-Investigation of Father Charles MacDonald

At the request of the Cornwall Police Service (CPS), the Ontario Provincial Police (OPP) conducted a re-investigation into the allegations by David Silmser of abuse by Father Charles MacDonald in 1994. Detective Inspector Tim Smith was assigned to conduct the investigation. Although he described it as “very close,” he ultimately concluded that he had insufficient grounds to charge Father MacDonald.

Timing and Strategy of the Investigation

As discussed in the previous section, at this time, Detective Inspector Smith was also tasked with investigating an allegation of obstruction of justice and an alleged conspiracy between the CPS and the Diocese to effect an illegal settlement. However, the bulk of his team's investigative activity in the early months of 1994 was focused on re-investigating Mr. Silmsen's complaint against Father MacDonald. Detective Inspector Smith explained that he knew there was some media attention at the time and he felt strongly that there were other victims out there. He believed that if those victims did not come forward by Christmas, the likelihood of anyone coming forward was remote. He testified that he initially thought they could finish the investigation by December but that he did not want to put a deadline on it.

Although he was aware that Mr. Silmsen's complaints had previously been investigated by the CPS, with the involvement of the Children's Aid Society (CAS), it was Detective Inspector Smith's intention from the beginning to conduct his own investigation. His direction to Detective Constable Michael Fagan was to re-interview everyone who had been interviewed by Constable Heidi Sebalj in the initial investigation. He described his approach as taking a portion of the CPS investigation and "fine-tuning it."

Detective Inspector Smith was also looking for other alleged victims to help corroborate the complaint. Based on his previous experience, the officer considered this type of evidence of particular importance. Although he was aware that there was no longer a requirement of corroboration, it was his view that in historical cases, there was a very low chance of a conviction unless there were multiple victims. He testified, "There was a never a conviction on the one and one," referring to cases of one accused and one alleged victim.

While this statement may reflect his experience, I want to make clear that it does not reflect any requirement of Canadian criminal law. Not all perpetrators will have more than one victim. Such an accused will still be convicted where there is sufficient evidence of guilt. The testimony of a complainant does not need to be corroborated by other alleged victims. While the existence of multiple complaints may improve the likelihood of conviction, the lack of other victims should not unduly influence the police in determining whether reasonable and probable grounds exist to charge a suspect.

In addition to re-interviewing the altar boys identified in the CPS investigation, Detective Inspector Smith testified that the OPP also made some effort to find other altar boys who had served at St. Columban's between 1969 and 1975. He could not remember if they made any effort to interview other priests who would have lived in the rectory with Father MacDonald at St. Columban's.

Limited Contact With CPS and CAS

According to Detective Inspector Smith, he had “complete cooperation” from the CPS and “anything [he] wanted or required was provided.” He testified that everything he was given by the CPS would have been included in his Crown brief. The Crown brief synopsis of the CPS investigation and David Silmsers’s statement to the CPS are the only CPS materials listed in the index to Detective Inspector Smith’s Crown brief. This indicates to me that he did not receive important materials from the CPS, including copies of the notes taken by Constable Sebalj, Sergeant Ron Lefebvre, and Constable Kevin Malloy during their first interview with Mr. Silmsers on January 28, 1993 (discussed in Chapter 6, on the institutional response of the Cornwall Community Police Service). In 2002, the notes of Sergeant Lefebvre were found by Michael Neville, the lawyer representing Father MacDonald, when he was granted access to materials collected by Constable Perry Dunlop. This incident will be discussed in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Staff Sergeant Luc Brunet testified that he briefed Detective Inspector Smith in early February and that his only other involvement in the re-investigation was a statement he gave to the OPP on August 18, 1994. Detective Inspector Smith spoke to Acting Chief Carl Johnston from time to time to keep him updated. Detective Inspector Smith also met briefly with Constable Sebalj on March 22, 1994, and they went over her notes of the investigation of Mr. Silmsers’s complaint.

Although aware of the CAS investigation of Father MacDonald, Detective Inspector Smith appears not to have contacted the CAS until March 21, 1994. At a meeting the following day, the officer informed Greg Bell, Bill Carriere, and Richard Abell of his plans for the investigation. The CAS provided him with some file materials, and arrangements were made for Detective Constable Fagan to come back to review the entire file. He did not come in to review the file until June, after Mr. Bell had made several follow-up calls to the OPP.

In my view, this was a missed opportunity for the OPP and CAS to coordinate their efforts and conduct a joint investigation. Moreover, it appears that the OPP did not take full advantage of the information sharing that did occur. It is unclear what use, if any, the OPP made of the materials provided by the CAS. Only Mr. Silmsers’s statement to the CAS is referenced in the Crown brief. Other items, including the minutes of the Project Blue meetings wherein the team laid out its reasons for the agency’s position that Father MacDonald presented a risk to children and male adolescents, could have been quite useful. While clearly not equivalent to reasonable and probable grounds, the factors and evidence used to justify the CAS position should have been of interest to the OPP.

On March 10, 1994, Detective Inspector Smith spoke to Acting Chief Johnston, who requested that he speak to Constable Shawn White and Staff Sergeant Garry

Derochie and provide them with advice on an investigation they were conducting into sexual assault allegations. On March 22, 1994, Detective Inspector Smith met with these CPS officers and discussed Constable White's investigation into historical allegations of physical and sexual abuse at a local group home. Detective Inspector Smith provided the CPS officers with some advice on historical sexual abuse investigations and discussed some of the techniques the OPP had used when it investigated St. Joseph's Training School. Presumably, Detective Inspector Smith was providing this advice to the officers while at the same time investigating the CPS's handling of Mr. Silmsen's complaint. This raises questions of transparency and the appearance of conflict of interest.

According to Staff Sergeant Derochie, at this meeting the officers discussed whether Detective Inspector Smith's investigation might be expanded to include the allegations that the CPS was investigating. Detective Inspector Smith advised that he was investigating only David Silmsen's allegation of abuse. Detective Inspector Smith testified that he was not requested to become involved in the CPS investigation and that such a request would have to have been made to the Commissioner, not to him personally. I note that Acting Chief Johnston, in his January 31, 1994, letter to Deputy Commissioner Piers, did request that the OPP look into reports of abuse at a Cornwall group home. Detective Inspector Smith was provided with a copy of this letter, but he testified that he was not asked to investigate these allegations.

Interview of David Silmsen

Location of the Interview

Detective Inspector Smith took a statement from David Silmsen on February 22, 1994, in the presence of Detective Constable Fagan and Mr. Silmsen's lawyer, Bryce Geoffrey, at the OPP station in Kanata. Prior to Mr. Geoffrey arriving, Detective Inspector Smith observed that Mr. Silmsen was "quite antsy" and "very, very nervous." Detective Inspector Smith testified that he chose the location because it was equipped to videotape interviews, a feature he said was uncommon at the time. Moreover, the station was near Ottawa, where Mr. Geoffrey was located.

Unfortunately, at the time, the station had only "hard interrogation-type rooms" for the taking of videotaped statements, which, Detective Inspector Smith said, created a bad atmosphere for this type of interview. In hindsight and after learning of Mr. Silmsen's prior experience with police stations, Detective Inspector Smith testified that the location may have contributed to some of the difficulties during the interview and started it off on the wrong foot. He acknowledged that he would do things differently today:

Today if I was to interview Mr. Silmsen I would use a soft interview room, off site, I would speak to his lawyer and ask if he had had the chance to review all of the other statements prior and then proceed from there.

Preparation for the Interview

Before this interview with Detective Inspector Smith, Mr. Silmsen had already given at least five statements to various agencies. However, Detective Inspector Smith was in possession only of the written statement Mr. Silmsen had provided to the CPS. He testified that he believed he also had Constable Sebalj's notes. He may have been aware of some of the other statements at the time, such as the one given to the CAS, but he did not have copies of them.

Detective Inspector Smith failed to realize that this was about the sixth interview of Mr. Silmsen on the same subject matter. As a result, neither he nor Mr. Silmsen were as prepared as they could have been for this interview. Detective Inspector Smith did not recall having any discussion with Mr. Silmsen or his lawyer about the benefits of reviewing previous statements or what Mr. Silmsen might do to prepare for the interview. Detective Inspector Smith expected that Mr. Silmsen's lawyer would have prepared him. I note that this assumption presumed that his lawyer would have knowledge of and access to all of Mr. Silmsen's previous statements.

David Silmsen's Experience of the Interview

Mr. Silmsen testified that every time he gave a statement he had to relive the events, which was hard on him. He noted that the interview with Detective Inspector Smith and Detective Constable Fagan was particularly tough. In this interview, he talked about all three individuals who abused him, and he described it as the "broadest" interview he had had to date. He felt that Detective Inspector Smith "just pushed and pushed" and would not allow him to have a break. Mr. Silmsen testified that by the time of this interview he had been questioned so much his patience was low.

Detective Inspector Smith recalled a point in the interview when Mr. Silmsen left the room in an agitated state, and he agreed that Mr. Silmsen had some typical victim symptoms and reactions. The Detective Inspector said he was trying to get, as quickly as he could, what was needed from that statement, and he thought it was done as easily as possible. He testified that he felt this was his one and only opportunity. He did not want to take another statement because defence counsel would have a "heyday" with that, which would be even harder on the complainant.

Detective Inspector Smith's concern about multiple statements was warranted but perhaps late. By the time of his interview with Detective Inspector Smith, Mr. Silmsers had already provided at least five statements that could have provided material for defence counsel. In this regard, given Detective Inspector Smith's recognition of the dangers associated with victims providing multiple statements, it is difficult to understand why he did not advise Mr. Silmsers of the benefits of reviewing his other statements instead of relying solely on Mr. Silmsers's lawyer to do so.

Decision to Ask About Extortion and Not Caution

As noted above in the section "Investigation of David Silmsers for Extortion," Detective Inspector Smith had agreed with Detective Inspector Fred Hamelink to ask some questions of Mr. Silmsers relating to extortion. At the time of the interview, Mr. Silmsers was unaware that he was being investigated for extortion, and he did not know that Detective Inspector Hamelink was observing through one-way glass.

During the statement, Detective Inspector Smith discussed Mr. Silmsers's allegations against Ken Seguin. He asked if Mr. Silmsers had contacted Mr. Seguin in regard to a settlement. Detective Inspector Smith testified that nowhere in Mr. Silmsers's answers did he feel Mr. Silmsers was incriminating himself.

Detective Inspector Smith's notes indicate that some advice was sought from regional Crown Peter Griffiths regarding the need to caution Mr. Silmsers,²⁸ but Detective Inspector Smith could not recall if he received advice on the point. Still, he was confident that he could deal appropriately with the issue himself:

I'm experienced enough that if I'm interviewing somebody on a sexual assault, and I want to put a question to him somewhere of something else and they're going to get into it, then I would stop and caution and charter them and give them a secondary caution. And I wanted to avoid that at all costs when dealing with Mr. Silmsers as I did.

Detective Inspector Smith said he was "walking on eggshells" when he put questions to Mr. Silmsers about Mr. Seguin. Detective Inspector Smith was concerned that if Mr. Silmsers was approached as a suspect, they were "liable to lose everything."

28. Mr. Griffiths' views on this conversation are discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

Deterioration of Detective Inspector Tim Smith's Relationship With David Silmser

Unfortunately, the relationship between Detective Inspector Smith and Mr. Silmser deteriorated somewhat after the interview. The officer had further contacts with both Mr. Geoffrey and Mr. Silmser. However, in or around March 1994, Detective Inspector Smith advised Mr. Geoffrey that should he require anything further from Mr. Silmser, he would go through Mr. Geoffrey rather than “confront Silmser.”

Allegations Against Marcel Lalonde

In the course of the interview, Detective Inspector Smith asked Mr. Silmser about difficulties he had had with a schoolteacher. Detective Constable Ron Wilson of the OPP had told Detective Inspector Smith that Mr. Silmser made allegations against a teacher named Marcel Lalonde during his statement to the CAS on November 2, 1993. The CAS felt unable to act on the allegation because it was too vague.

In response to Detective Inspector Smith's questioning, Mr. Silmser disclosed that Mr. Lalonde was a grade 8 teacher at Bishop Macdonell School who had molested him at Mr. Lalonde's home. Mr. Silmser went on to provide more specifics of the alleged assaults and to confirm that Mr. Lalonde was his teacher at the time of the incident.

On March 22, 1994, there was a meeting between the OPP and CAS. According to Greg Bell's notes, they discussed why the CAS felt that it could not pursue the allegation against Mr. Lalonde without more details from Mr. Silmser. Detective Constable Chris McDonell said that Mr. Lalonde was still teaching at Sacred Heart. There is no indication in the notes that CAS was advised of the further details obtained by Detective Inspector Smith in his February 22, 1994, interview of Mr. Silmser.

On July 21, 1994, Detective Inspector Smith wrote to Acting CPS Chief Carl Johnston about the allegations against Mr. Lalonde. On a review of the evidence, it appears that this was the first time the information about Mr. Lalonde was referred to the CPS by either the OPP or the CAS. The letter sent to Acting Chief Johnston referred only to information in the CAS statement from Mr. Silmser, not to the additional information obtained by Detective Inspector Smith during Mr. Silmser's February 1994 statement.

Detective Inspector Smith, in his testimony, was shocked that he had delayed in referring the matter to the CPS and that he had missed providing both the CAS and the CPS with the information in his possession from Silmser's statement of February 22, 1994: “I'm being honest with you. It appears I missed it. I was unaware somehow or I've missed it, and it should have been reported.”

When asked about the importance of providing the CAS with the further information, Detective Inspector Smith responded, "If I had given that information there's no doubt in my mind that they would have acted on it."

I agree with Detective Inspector Smith that "there's no excuse" for not promptly sharing the information in his possession and appreciate his candour in acknowledging this oversight. As discussed in Chapter 6, the CPS concluded that it could not take further steps in part on the basis that it did not have any details that would allow it to pursue the matter further.

I am also concerned that the OPP referred Mr. Silmsen's complaint to the CPS rather than following up itself. I understand that allegations against Marcel Lalonde were not part of the mandate given to Detective Inspector Smith. However, referring the matter to CPS meant that Mr. Silmsen had to deal with two police agencies: one for the Father MacDonald complaint and another for Mr. Lalonde. This problem was compounded by the fact that Mr. Silmsen had already had a negative experience with the CPS following his original complaint against Father MacDonald.

Two years later, in fall 1996, the OPP did investigate Mr. Lalonde after receiving a further complaint of historical sexual abuse. The CPS conducted its own investigation of Mr. Lalonde in 1997 in relation to allegations by other complainants. Marcel Lalonde was charged by both agencies and eventually found guilty on a number of counts. However, none of the charges related to Mr. Silmsen's allegations. These two subsequent investigations are discussed in detail in Chapter 6 and later in this chapter.

Witness Statements Taken

The Crown brief of the re-investigation of Father Charles MacDonald lists twenty witnesses, in addition to Mr. Silmsen, from whom the OPP had statements. The majority of these individuals had been previously identified and interviewed by Constable Sebalj in the CPS investigation.

C-3 and C-56 each had made allegations against Father MacDonald during the CPS investigation. On February 16, 1994, Detective Constable Fagan spoke to C-3, who said he did not want to get involved in the OPP investigation. C-3 did advise Detective Constable Fagan of communications that he had recently had with Bishop Eugène LaRocque about his allegations. Detective Constable Fagan asked C-3 for a copy of his letter to the Bishop, but there is no indication he requested a copy of the Bishop's response. In my view, this should have been done. Detective Inspector Smith's team had no further contact with C-3 in the course of this investigation. Detective Inspector Smith acknowledged that C-3 was a potentially important witness but did not feel that the OPP ought to have taken further steps to try to encourage his cooperation. He stated:

We've banged on doors and we've written letters and we've done other things with others that were reluctant, good witnesses we could have had, and they've told us, "Leave me alone. Stay away from me. I've put that behind me." And if you leave them alone after a while and they see some things happen slowly after they'll come back; "Well, here's the phone number. Give us a call."

...

But if you hound them, sir, you reopen wounds and they'll disassociate themselves from it ... it's a balancing act, sir. You walk on eggshells when you deal with these reluctant victims. Sometimes you can get them; sometimes you can't.

C-56 was also re-contacted by the OPP in 1994. He provided a statement to Detective Constable Fagan on March 19, 1994, regarding the same incident he had described to Constable Sebalj, an allegation of uninvited sexual contact. There is nothing in the statement to indicate that C-56 did not want to participate in the investigation.

Two other witnesses who had not been identified in the CPS investigation, C-88 and C-89, gave statements to the OPP about their interactions with Father MacDonald. Detective Inspector Smith learned of C-88 during the initial meeting between his team and the CPS on February 7, 1994. Staff Sergeant Brunet advised Detective Inspector Smith of the telephone call that the CPS had received from the Royal Canadian Mounted Police referring an alleged victim, C-88. Detective Constables Fagan and McDonell travelled to New Brunswick to take a statement from C-88 on March 27, 1994. C-88 in his statement referred to an alleged incident that occurred in his young adulthood when he was subject to an unwanted sexual advance by Father MacDonald.

On April 5, 1994, Detective Constable Fagan took a statement from C-89, who described an alleged sexual incident that occurred between himself as a young man and Father MacDonald.

Detective Inspector Smith's team also had information that Monsignor Donald McDougald had told the CAS that in the fall of 1991 an anonymous person called the Diocesan Centre and claimed that Father MacDonald had committed an impropriety of a sexual nature.

Detective Inspector Smith was of the view that they had located at least four or five other possible alleged victims in addition to David Silmser. In reference to C-88 and C-89, Detective Inspector Smith stated, "They were persons of interest to send to the Regional Director for recommendations, whether they were going to be used as similar fact or whether they were going to be victims."

Detective Inspector Smith later pointed out concerns in using these other allegations as support for the allegations made by Mr. Silmsers, given the ages of the individuals and the nature of the allegations.

Interview of Father Charles MacDonald

On June 7, 1994, Detective Constable Fagan conducted an interview of Father MacDonald in the presence of Detective Constable Norman Hurtubise and Father MacDonald's lawyer, Malcolm MacDonald. Detective Inspector Smith testified that it had been his intention to be present for the interview but he was out of town at the time. He did not consider rescheduling the interview because he had been attempting to arrange it for some time and was anxious to get it done.

Detective Inspector Smith agreed it was an important interview and it had been his intention to be at important interviews; however, he felt that Detective Constable Fagan was fully capable of conducting this interview based on his experience working with him in the St. Joseph's Training School investigation in Alfred.

Detective Inspector Smith did not write out all the questions for Detective Constable Fagan but did fax him a list of some questions to address. He believed that he also reviewed some of the background facts with Detective Constable Fagan prior to the interview.

In reviewing the statement taken by Detective Constable Fagan, a number of weaknesses are evident. Many of these were acknowledged by Detective Inspector Smith in his testimony.

Father MacDonald had his lawyer, Malcolm MacDonald, present at the interview and according to Detective Inspector Smith, Mr. MacDonald did "all the talking." Detective Inspector Smith testified that had he been there "the interview would have been conducted differently ... Malcolm MacDonald wouldn't control it." With or without a lawyer present, and even in the face of an outright denial by the suspect, important information could be gleaned from an interview. As Detective Inspector Smith testified:

I tried to conduct interviews of a number of religious people in the past and basically all I got from them was denial and self-serving statements. But what we did get mostly was that there was a knowledge between themselves and the victim which I was—that helped—that assisted.

Accordingly, Detective Inspector Smith would have asked about the relationship between Father MacDonald and Mr. Silmsers.

Unfortunately, Detective Constable Fagan failed to explore this important area. He did not ask about how well Father MacDonald knew Mr. Silmsers or

about his relationship with altar boys generally. Detective Constable Fagan did not confirm the dates that Father MacDonald was assigned to particular parishes or confirm the roles he had in relation to young people. He also neglected to ask whether Father MacDonald had knowledge of parish records that would help clarify dates and events.

Among the various statements given by Mr. Silmsen and his family members up to this point, there were some discrepancies and uncertainties about the date that Mr. Silmsen first became an altar boy and the year of the retreat where Mr. Silmsen alleged he was assaulted. Some of these uncertainties could, and in my view should, have been investigated and potentially resolved by the OPP before the interview with Father MacDonald by reviewing school records, property records, and, of course, parish records. Detective Inspector Smith thought that an attempt was made to clarify those dates. However, it appears that in the interview, Detective Constable Fagan relied solely on the information provided by Mr. Silmsen in the February 22, 1994, interview. These dates are inconsistent with his earlier statements and were later proved incorrect.

Detective Inspector Smith agreed that in historical sexual abuse situations, it is useful for an investigator to accurately nail down as best as possible the dates in question. I agree and note that given the difficulties of memory over time, having independent records to verify recollection is of assistance to both the complainant and the alleged perpetrator who is responding to the allegations.

Detective Inspector Smith noted that this was the first time that he had done a non-institutional historical sexual abuse case:

Now, when I had an institution, sir, I had records—unbelievably—and I could—I had no difficulty on that.

You've brought to my attention now some of the things that we missed or maybe we should have thought about, and I agree with you.

While access to records is certainly made easier during an institutional investigation, nothing prevented Detective Inspector Smith and Detective Constable Fagan from attempting to obtain records during their re-investigation of Father MacDonald.

Detective Inspector Smith testified that Mr. Silmsen and his lawyer had said they would provide him with school records that were never forthcoming. Because of the importance of this evidence, I find that the OPP should have taken steps to obtain these records rather than relying on Mr. Silmsen.

The interview with Father MacDonald had other shortcomings. Detective Constable Fagan raised and then, inexplicably, did not follow up on Father

MacDonald's involvement with C-3 and C-56. The entirety of the exchange he had with Father MacDonald on both was as follows:

M. Fagan: No I'm jus I'm ... are you familiar with a person by the name of [C-3]

C. MacDonald: Yes he was ... in the Parish when I was there um (pause)

M. Fagan: Are you familiar with a person by the name of [C-56]?

C. MacDonald: He was also a member of the Parish (inaudible) years [C-56] yes

Detective Inspector Smith testified that he would have explored Father MacDonald's relationship with these two individuals further. In addition, there were no questions about C-88, C-89, or the unidentified individual who had called the Diocesan Centre in 1991 with allegations against Father MacDonald. Again, Detective Inspector Smith agreed questions in this area might have been helpful.

The interview also could have further explored Father MacDonald's knowledge of the circumstances of the illegal settlement with Mr. Silmsr. Detective Inspector Smith notes that while questions could have been asked on this area, his understanding was that Father MacDonald "had little if anything to do with the settlement other than being—I think contributing some money." Given that the settlement came into existence only because of allegations made against Father MacDonald and that he was the direct beneficiary of the settlement, in my view, it would have been worthwhile to question him at least on his involvement and what he knew of the involvement of others.

As it happens, both Malcolm MacDonald and Father MacDonald raised the illegal settlement in response to Detective Constable Fagan asking why Mr. Silmsr would make these allegations. Father MacDonald stated that he believed Mr. Silmsr's motivation was money:

... with the telephone calls the screaming and the cursing and the drunken behaviour that he exhibited over these past ... eighteen months not to me but to different people it was evident he was after money ...

He went on to state:

... the columnist Claude McIntosh I think explained it very very well in um the article in the Free Holder [sic] some months ago about why if one would do that sometimes people in high profile positions panic at

the thought of there [sic] name being publicly connected to a crime especial especially sexual assault rather than go through the agony of proving their innocence and enduring the stigma they are willing to buy the accusers silence (pause) I couldn't say it better myself I didn't like it go it goes against my principle to pay money on the other hand I had an excellent reputation and name in the diocese ...

Malcolm MacDonald similarly commented:

... I told the Bishop when he talked to then I said you know you even in a drunken state I could have defended this case from the charges from the way we knew what we had in front of us anyway ... the allegations cause were so I wouldn't give a cent an then I found out that they were gonna divvy up the money I said do what you want with it save the embarrassment the only reason

It is apparent from these answers that Father MacDonald had some knowledge of the interactions between Mr. Silmsen and others leading up to the settlement. No questions were put to Father MacDonald about his conversations with the Bishop or the Bishop's delegate. In fact, no follow-up questions to the comments about the settlement were put to Father MacDonald.

Detective Inspector Smith indicated that he probably would have reviewed the statement taken by Detective Constable Fagan within two weeks of June 7, 1994. Detective Inspector Smith was not sure whether or not he noted any deficiencies in the statement when he did review it, but he was clear that he was not going to do a second interview of Father MacDonald.

This is an interview that Detective Inspector Smith ought to have done himself. In his testimony, he took responsibility for the deficiencies in the statement and stated that he could have assigned a better interviewer to the case.

Preparation of Crown Brief

Detective Inspector Smith was contacted by Peter Griffiths on October 11, 1994, and asked to finish his three investigations soon because they were "dragging." Soon afterward, Detective Inspector Smith learned that Detective Inspector Hamelink had already submitted his brief in the extortion matter.

The Crown brief was finalized over the next month. Detective Inspector Smith stated he would have reviewed all of the statements. He did not know if he reviewed the final brief completely but he would have reviewed a rough version and directed Detective Constable Fagan to put it together and deliver it.

Detective Inspector Tim Smith's Views on Reasonable and Probable Grounds

With respect to reasonable and probable grounds, the brief's synopsis concluded:

Because of SILMSER's credibility, and selective memory, the investigators find it difficult to obtain the necessary reasonable grounds to believe these offences took place as indicated.

However there still remains strong suspicion that SILMSER was sexually assaulted in some manner by Father Charles MacDONALD.

Part of this suspicion would be supported by the Church providing a monetary settlement to SILMSER, without the necessity of a court hearing.

Should, on a review of all the evidence, by the prosecutors, indicate the investigators have misinterpreted the evidence obtained, and there exists probable grounds, charges may still be preferred.

In his testimony, Detective Inspector Smith made it clear that he formed the opinion early on that Silmsr was a victim of sexual abuse:

... I'll go back to Silmsr, and I'll tell you, I believed him, and I'll tell you why.

Within the statement and early in the statement, he mentioned that he went to the Archdiocese or the Diocese seeking an apology and a letter. And he stated that, "All I want is a letter of apology so I can show it to my mother, to show her that I'm not all that bad; that there were things that happened in my life to cause me to be the way I am."

And I can show you 100 other statements that we took in St. John's, in St. Joe's that were the same. These guys, all they wanted was recognition that it happened, an apology, and show it to their parents or loved ones and got on with life.

So when I saw that out of Dave Silmsr, no doubt in my mind, he was a victim.

Detective Inspector Smith later testified that while he believed that Mr. Silmsr had been sexually assaulted, he did not know who had done it and had difficulties with the “when and where.”

However, when questioned about the conclusion in the synopsis, Detective Inspector Smith stated his decision on reasonable and probable grounds was “very, very close.” He testified that he had no difficulty believing Mr. Silmsr regarding his allegations about events in the sacristy in the church and the events at the retreat, although he was not able to find corroboration of the events at the retreat. Detective Inspector Smith did “have difficulty” with the allegation regarding the assault during the car ride because it was quite different from the other complaints and because the violent nature of the assault seemed to him to be out of character for Father MacDonald. Of course, it would have been open to Detective Inspector Smith to lay charges on the first two allegations but not the third.

It seems his view on laying charges was influenced by his experience with the difficulties of succeeding in a historical sexual abuse prosecution where there is only one complainant. It was Detective Inspector Smith’s preference to wait for more victims to come forward who would strengthen the case. He stated:

... I could have laid the charges, but I’ll tell you that, from my experience, a Crown attorney would have no reasonable prospect of conviction and he wouldn’t proceed. And once that’s done, then I could never revisit it.

I am of the view that in making his decision about reasonable and probable grounds, Detective Inspector Smith was overly concerned with the probability of conviction. Crown counsel, not the police, is responsible for deciding whether a reasonable prospect for conviction exists in a particular case. Detective Inspector Smith was entitled to lay charges where he believed on reasonable grounds that an offence had been committed. If he felt more evidence was needed to bolster the prospect of conviction he should have taken further investigative steps.

I also note that Detective Inspector Smith’s comment that he could “never revisit” charges after a Crown decided not to proceed is incorrect. While it is not particularly common, Crown counsel may stay the prosecution of a charge for up to a year to allow the police to continue their investigations.²⁹ Charges withdrawn because the Crown determines there is no reasonable prospect of conviction may also be re-laid where new evidence comes to light. I accept that these could, however, lead to other possible *Charter* applications.

29. *Criminal Code*, R.S.C. 1985, c. C-46, s. 579.

On December 21, 1994, Detective Inspector Smith received a letter from Mr. Griffiths advising that reasonable and probable grounds did not exist to lay charges in respect of any of the four incidents alleged by Mr. Silmsler. Mr. Griffiths' views and his communications with Detective Inspector Smith on this matter are set out in detail in Chapter 11.

David Silmsler As a Complainant

In the synopsis, Detective Inspector Smith described Mr. Silmsler as a "most difficult victim to deal with." In his testimony, the officer stated, "Silmsler, I can tell you was, of all the victims that I have ever investigated, is the most troubled individual I'd ever had as a victim." I note that Detective Inspector Smith also agreed that much of Mr. Silmsler's behaviour was consistent with that of victims of sexual assault whom the officer had encountered in prior investigations.

Mr. Silmsler's behaviour during the investigation also appears consistent with the expert evidence I heard regarding adult survivors of historical sexual abuse. Dr. Peter Jaffe testified:

Survivors aren't always friendly, cooperative people; survivors are angry, distrustful, suspicious of any professional, even their own lawyer. When you're talking about being violated in childhood, you know, in a trust relationship, you remain vigilant about every relationship, and many survivors are angry, suspicious, distrustful. They use alcohol and drugs to medicate themselves and deal with the pain.

Dr. Jaffe emphasized the importance of those in the justice system—lawyers, judges, and police officers—understanding the potential long-term effects of abuse. While not wishing to stereotype all victims, he noted, "Survivors are not polite, friendly, cooperative sometimes ... They make it very difficult."

In my view, Detective Inspector Smith did have this understanding. He testified, again in relation to his investigation in Alfred, that some of the victims he encountered did not trust the police and generally had difficulties dealing with people in positions of authority.

Detective Inspector Smith also testified that he was not concerned by Mr. Silmsler's past experience with the police:

[Silmsler's] record was, he was an angel compared to some of the ones that we'd—we were dealing with murderers and rapists and robbers and everybody, and [Silmsler's] criminal record was—I don't know if I can say it here and that, but it was really insignificant.

Given his appreciation of the difficulties involved with victims of historical sexual abuse, I find several of the comments in the Crown brief synopsis troublesome.

For instance, Detective Inspector Smith pointed to Mr. Silmsner's selective memory, particularly in regard to the alleged rape, as one problem. However, in his earlier testimony, Detective Inspector Smith gave evidence about his experience in Alfred and noted that victims were "selective" in describing details of abuse and particularly reluctant to disclose offences of penetration. The expert evidence heard during this Inquiry confirmed that the disclosure of abuse is often incremental in cases of historical sexual assault.

Detective Inspector Smith also noted in the synopsis:

SILMSNER's recent request following news releases that he still wishes charges laid despite receiving a monetary settlement is suspect.

He is presently pursuing a civil action against the Cornwall Police Service, relating to the release of his statement to the press, and the findings of this investigation can only enhance his position in that endeavour.

I disagree with Detective Inspector Smith's assertion that the findings of his re-investigation of Father MacDonald would affect the determination of civil liability for the unauthorized release of a victim's statement to the press.

In any case, Detective Inspector Smith expanded on his use of the word "suspect" during his testimony before me:

I questioned his sincerity. You know, okay, he wants to proceed with charges now at this point and then also that he wouldn't speak to me without a lawyer being present—that further back—and that all of a sudden I had a feeling that we're being used for—to pursue his civil suit now that the—he's got his \$32,000.

Earlier, however, Detective Inspector Smith stated that he was very familiar with concurrent civil and criminal proceedings as those had happened all through the St. Joseph's and St. John's training school investigations. Detective Inspector Smith testified that the fact that a victim was seeking a civil settlement did not affect his view of the credibility of that victim.

Problems With the Investigation

Having reviewed the evidence, I find that the OPP failed to take proper investigative steps and employ proper techniques in the 1994 re-investigation of Father Charles MacDonald. In addition, I find that Detective Inspector Smith failed to

sufficiently supervise Detective Constable Fagan to ensure that interviews were properly conducted.

As set out above, there were significant flaws in the preparation and execution of the key interviews of David Silmsen and Father MacDonald. Also, insufficient investigative steps were taken to obtain independent records verifying important dates and to identify and follow up with further victims.

Although Detective Inspector Smith had experience investigating historical sexual abuse in an institutional setting, he had no experience with non-institutional cases, which he acknowledged were more difficult. While such investigations are now part of the OPP's major case management plan, given the particular complexities and sensitivities that arise in historical sexual abuse cases, I recommend that case managers consult with the Regional or Detachment Sexual Abuse Coordinator early in the planning phases of such investigations and include these experts as part of the investigative team.

Obstruction and Conspiracy Investigations

In addition to the re-investigation of Father Charles MacDonald, Detective Inspector Tim Smith also investigated two related issues in February 1994: the alleged conspiracy between the Cornwall Police Service and the Diocese of Alexandria-Cornwall to effect a civil settlement that terminated the CPS investigation of David Silmsen's sexual assault allegations; and the alleged obstruction of justice by lawyers who brought about that civil settlement in consultation with the local Crown attorney.

Meeting With CPS Chief Claude Shaver

It was clear that the Diocese had been involved in effecting the civil settlement with Mr. Silmsen. Therefore, with respect to this conspiracy investigation, the question for Detective Inspector Smith was whether the Cornwall Police Service had conspired with it in deciding not to pursue criminal charges against Father MacDonald.

Detective Inspector Smith's theory was that if there was a conspiracy involving the Cornwall police, Chief Claude Shaver had to be involved:

The common denominator in the whole issue of the charges not proceeding and the settlement coming about and the catalyst for everything was Malcolm MacDonald.

So for that theory to work, Malcolm had contacted the Bishop, he had contact with Jacques Leduc, he had contact with Luc Brunet and he had contact with Murray MacDonald. But for the whole thing to work there

had to be the okay of the Chief. Luc Brunet couldn't make that decision, nor could Constable Heidi Sebalj, nor could anybody else in that department because the Chief was the one that assigned and nobody in there could bypass the Chief to make that theory work.

I question Detective Inspector Smith's starting premise that Chief Shaver had to be complicit in any conspiracy involving the CPS. Police officers do not need to inform their chief when they decide whether or not they have formed reasonable and probable grounds for a charge. Moreover, it is unclear to me why Detective Inspector Smith believed that the CPS officers could not have acted without the approval and knowledge of their chief. Other than the initial assignment of the investigating officer, Chief Shaver had had very limited involvement in the investigation of Father MacDonald.

Prior to meeting with the Ontario Provincial Police (OPP) officers, Chief Shaver sent Detective Constable Fagan a seven-page statement summarizing the case, which he had prepared for his lawyer.

On the afternoon of July 13, 1994, Detective Inspector Smith and Detective Constable Fagan met with Chief Shaver for two hours at his home. This was the only time that Detective Inspector Smith spoke with Chief Shaver. Detective Inspector Smith testified that he remembered that meeting "very vividly." He and Detective Constable Fagan met and reviewed Chief Shaver's statement just before the interview.

Detective Inspector Smith described Chief Shaver as "a hard interview"—an individual who is very dynamic and who takes over a conversation. Aside from some additional information Chief Shaver conveyed about his career and his teaching profession, Detective Inspector Smith did not see anything in what Chief Shaver told him that was glaringly different from the statement he had provided.

Detective Inspector Smith did not take notes during the interview, at Chief Shaver's request. He made very few notes after the interview. It is my view that Detective Inspector Smith should have taken notes during the interview, or failing that, he should have made detailed notes about the discussion afterwards.

Admission by Father Charles Macdonald to Bishop Eugène LaRocque

In his statement, Chief Shaver wrote that Bishop Eugène LaRocque had advised him that Father MacDonald had made an admission in October 1993. The statement reads, "The Bishop contacted me later and advised that the Priest had admitted the assault and that it was an isolated incident and he was prepared to leave for the treatment / assessment Center immediately."

In his testimony, Detective Inspector Smith recalled that Chief Shaver did not have notes of the conversation, but confirmed that the Bishop said that Father MacDonald admitted the assault.

Chief Shaver, in his testimony before me, said that the statement was incomplete. The Bishop at first said that Father MacDonald admitted the assault but then immediately corrected himself and said that Father MacDonald had admitted to an isolated homosexual relationship (see Chapter 6, “Institutional Response of the Cornwall Community Police Service”).

That said, it was clearly Detective Inspector Smith’s understanding at the time that Chief Shaver had been told by the Bishop that Father MacDonald admitted sexually assaulting David Silmsr. During this Inquiry, Detective Inspector Smith was asked if it seemed reasonable to him to have an agreement to have a priest removed from the parish if he admitted to an alleged assault. Detective Inspector Smith said:

In the absence of anything else that was being done, and I guess the Chief—I know that he hasn’t got very much investigative background, criminally anyway—that this was probably the best-case scenario he could make since the case had been closed on him. The allegation dates—only one allegation dates back to the seventies, which would be 20-some odd years prior, and this priest would be taking treatment. That seems reasonable to me at that—you know, at that juncture.

In my view, Detective Inspector Smith should have considered the impact of what Chief Shaver and the Bishop had decided. The agreement to remove Father MacDonald from the parish could have been explored in more detail to see if it was also an attempt to obstruct justice, given that with Father MacDonald’s apparent admission, Chief Shaver might have been able to re-open the investigation into Father MacDonald, even without the cooperation of Mr. Silmsr.

Source of Settlement Funds

Another area of interest identified by Detective Inspector Smith in his testimony was Chief Shaver’s information regarding the settlement funds. In his statement, Chief Shaver stated that the Bishop had advised him that of the \$32,000 paid to David Silmsr, the Diocese had contributed \$10,000, Father MacDonald had contributed \$10,000, and another \$12,000 came from an unnamed source. Detective Inspector Smith testified that this was of interest to him because he had a feeling that the unnamed source was Malcolm MacDonald.

Despite this interest, Detective Inspector Smith said the question of who paid the money was not really an issue for him in his investigations of the alleged conspiracy or obstruction of justice.

In my view, the source of the funds was potentially important evidence and given that Detective Inspector Smith was tasked with investigating the circumstances of the illegal settlement, I am surprised that he did not make more effort

to confirm this information. There is no indication that the payments were made illicitly, and so presumably the amounts and payers could have been traced through financial records. The source of the funds might have helped identify co-conspirators. Yet it appears that Detective Inspector Smith did not make any effort to obtain these records either by requesting them or seeking search warrants.

Quality of the CPS Investigation

According to Detective Inspector Smith, during the interview, Chief Shaver readily admitted that the Cornwall Police Service's investigation of David Silmser's complaint was poor. But Detective Inspector Smith testified that this admission did not make it a conspiracy.

Detective Inspector Smith agreed that it was troubling that the Children's Aid Society (CAS) and the probation office were not notified by CPS of the allegations in the course of the investigation. However, the level of secrecy surrounding the CPS's file on David Silmser's complaint did not raise his suspicions. As discussed in Chapter 6, very limited information about the matter was initially entered on the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) system, nor was anything further entered during the active investigation. After the decision was made to close the investigation, when Chief Shaver discovered the investigation had not been documented, he ordered Constable Sebalj to enter it as a project file, which was only accessible to a limited number of people. According to Detective Inspector Smith, it was not unusual to keep high-profile investigations "under wraps" in the early stages.

No Interviews With Other CPS Officers

As noted above, Detective Inspector Smith believed that none of the other officers involved in the David Silmser complaint could have conspired with the Diocese without the Chief being involved, and he was convinced that the Chief would not have conspired with the Bishop because, he said, "When I spoke to the Chief it was abundantly clear that he and the Bishop did not get along at all and really would not agree to anything."

Accordingly, Detective Inspector Smith testified that he did not feel it was necessary to pursue any further investigation of Staff Sergeant Luc Brunet or any other senior CPS staff. In early 1994, prior to his meeting with Chief Shaver, Detective Inspector Smith had spoken informally with Constable Sebalj and Staff Sergeant Brunet. Staff Sergeant Brunet provided a statement to Detective Inspector Hamelink's team that was shared with Detective Inspector Smith, and Constable Sebalj provided a brief statement to Detective Constable Fagan relating to her contacts with Murray MacDonald. Detective Inspector Smith did not feel

the need to interview these officers to take formal statements. He also chose not to speak with other officers who were involved in the David Silmsers complaint, such as Sergeant Steve Nakic, Staff Inspector Stuart McDonald, Deputy Chief Joseph St. Denis, Sergeant Claude Lortie, Sergeant Ron Lefebvre, or Constable Kevin Malloy.

Another reason Detective Inspector Smith gave for not interviewing officers was “fear of reprisal.” Yet he also testified that he did not have any concerns that the disciplinary proceedings against Constable Perry Dunlop might make officers less willing to come forward.

Finally, Detective Inspector Smith testified that in his experience, officers would come forward if they had information:

One reason—another reason is that they wouldn’t tell us anything, but if we were around, we used to get notes slipped under our door or back at your hotel room or you would get some indication as to what was going on and where to look. In this case—and we waited quite a period of time and the police department knew what we were there for—we didn’t get one, what we call a kite or a note or a telephone call or anything dropped off, an envelope, from anybody regarding this.

Detective Inspector Smith was of the view that when investigating a police force you either interview everyone on the police force or no one.

Detective Inspector Smith did state that in hindsight it would probably have been beneficial to get statements from more officers. I agree and find his justifications for not interviewing CPS officers less than satisfying. I am unconvinced that officers who may have been involved in a conspiracy would have come forward on their own. Moreover, several of the officers had already been interviewed during the investigation by the Ottawa Police Service as set out in Chapter 6.

No Interview of Constable Perry Dunlop

Detective Inspector Smith also chose not to interview Constable Perry Dunlop. He was aware of Constable Dunlop’s involvement in releasing Mr. Silmsers statement to the CAS but was of the view that he had no other relevant information:

He’s the one that made the allegations against the police force. He wanted the matter investigated. We investigated. What other information did he have at that point other than what I already had? And that was that he disclosed the statement to the CAS and that was it.

Detective Inspector Smith also said that he was concerned because Constable Dunlop was on sick leave and could have claimed that an interview would exacerbate his stress.

Given the allegations of cover-up that Constable Dunlop made against the CPS, it would have been prudent to interview him to determine what, if any, information he had to justify those claims. Detective Inspector Smith should not have decided, without even attempting to speak to Constable Dunlop, that he had no information to offer.

Investigation of the Crown's Involvement

Detective Inspector Smith and Detective Constable Fagan took a statement from Murray MacDonald on July 14, 1994. Detective Inspector Smith knew Crown Attorney Murray MacDonald before this investigation. They had worked together on a homicide case and on some of the Alfred training school prosecutions.

Detective Inspector Smith did not think that his professional relationship with Mr. MacDonald created a conflict of interest, but he agreed there could have been a perception of conflict. Given the publicity surrounding these allegations and the widespread controversy in the community over them, Detective Inspector Smith should have been more alert to the possibility of a perceived, if not actual, conflict of interest in investigating Mr. MacDonald. He should have put his mind to this issue before embarking on the investigation.

Detective Inspector Smith testified that he considered Mr. MacDonald a suspect but he did not caution him. Mr. MacDonald, in his testimony, stated that he was told he was a “person of interest” with respect to the investigation. The tone of the interview, however, suggests that Detective Inspector Smith was not seriously looking at Mr. MacDonald as part of a conspiracy or obstruction of justice. Detective Inspector Smith did not challenge him on his answers and at one point seemed to be prompting him to say that he recognized that it was not unusual to have a civil settlement in the course of a criminal prosecution.

Murray MacDonald testified that he had never seen a copy of the settlement document before Detective Inspector Smith showed it to him in the interview. He also stated that he was not aware that it contained a bar on criminal proceedings. It is unclear from the statement, but presumably he meant that he was not aware of a bar on criminal proceedings when he was asked to give an opinion in 1993; it would be surprising if he were not aware of it at the time of the interview, given the widespread publicity surrounding the incident in January 1994. Detective Inspector Smith evidently believed Mr. MacDonald on this point because he testified that if Mr. MacDonald had seen the settlement documents at the time, there would have been a big difference in what transpired.

Investigation Into the Diocese

Detective Inspector Smith and Detective Constable Fagan interviewed at least five Diocesan officials. Detective Inspector Smith also had a meeting with Doug and Nancy Seguin that touched on the involvement of the Diocese in the illegal settlement.

Information From Nancy and Doug Seguin

On March 2, 1994, Nancy Seguin called Detective Inspector Smith at the suggestion of Detective Inspector Hamelink, who thought she might want to speak with Detective Inspector Smith “regarding the settlement.” Detective Inspector Smith met with Nancy and Doug Seguin at their home on March 8, 1994, for just over three hours and discussed, among other things, a meeting she had with Bishop LaRocque on January 10, 1994. Detective Inspector Smith took notes but did not take a statement.

Ms Seguin told Detective Inspector Smith that the Bishop had admitted to her that in return for the settlement monies, David Silmser was to “stay quiet” and “not bring charges against Father Charles.” Detective Inspector Smith asterisked that portion of his notes because he intended to bring it to the Bishop’s attention when they spoke. These comments were significant because, if accurate, they would indicate that the Bishop knew, no later than January 10, 1994, that the purpose of the settlement was to terminate criminal proceedings. Ms Seguin also recalled that the Bishop told her he was against the settlement but that the canon lawyer had made the decision.

Interview of Jacques Leduc

Detective Inspector Smith and Detective Constable Fagan took a statement from the Diocese’s lawyer, Jacques Leduc, on August 2, 1994. Detective Inspector Smith testified that he did not caution Mr. Leduc because Mr. Leduc’s signature was not on the final settlement document. I note that Detective Inspector Smith did caution the Bishop, whose name also was not on the documents and whose instructions would have been carried out by Mr. Leduc. Detective Inspector Smith suggested the difference may have been that he had different information by the time he interviewed the Bishop one month later. He did not, however, elaborate on what information that might be.

It is evident that when he interviewed Mr. Leduc, Detective Inspector Smith already believed that Malcolm MacDonald was the prime target and, in his words, that Jacques Leduc would “be a better witness than an accused.” Detective Inspector Smith also testified, “I was satisfied at this point, pretty well in my own mind, that Malcolm MacDonald had drafted that document.”

Detective Inspector Smith's views in this regard seemed to be largely based on his opinion that Mr. Leduc was not a criminal lawyer and therefore would not have known enough about criminal law to insert the illegal clause in the settlement document. This conclusion was based on an assumption by Detective Inspective Smith. He did not investigate Mr. Leduc's knowledge of criminal law by asking Malcolm MacDonald or others about Mr. Leduc's experience.

In addition, I note that the drafting of civil settlements, including the inclusion of non-disclosure clauses, was probably more familiar to a civil lawyer like Jacques Leduc than to a criminal lawyer like Malcolm MacDonald. In fact, Mr. Leduc testified at this Inquiry that in 1992 he had helped an alleged victim of sexual abuse obtain a civil settlement from a diocese in Quebec. Further, Mr. Leduc's answers during the interview clearly indicate that he did know that the parties could not seek to end criminal proceedings through a civil settlement and that he was involved in the drafting process.

In regard to the reference to "criminal proceedings" in the settlement document, Mr. Leduc testified, "there is no doubt in my mind ... that, then and now, that ... the ... release was not to refer to any criminal proceedings whatsoever."

In his interview, Mr. Leduc told Detective Inspector Smith that both he and Malcolm MacDonald believed the matter was purely civil and did not involve criminal matters. Mr. Leduc went on to say that had he caught the inclusion of the reference to criminal proceedings, he would have asked Mr. MacDonald to remove it. In his testimony, Detective Inspector Smith agreed that he had some "preconceived notions" about the settlement agreement based on the legal background of the lawyers involved. In my view, these notions should have been revisited, particularly given the different information that was provided by Mr. Leduc in his interview.

Mr. Leduc told Detective Inspector Smith that he prepared a draft "Release and Undertaking Not to Disclose" and faxed it to Mr. MacDonald, who was having some difficulties because he had never prepared this type of document. After a break in the taped interview, Mr. Leduc clarified his description of the drafting process:

... I prepared a draft, which I faxed to Malcolm MacDONALD. We had a telephone conversation ... about the ... the draft, and ... Malcolm ... fine tuned it, and he may have ... sent it back to me, I'm not sure whether he did or not, but I suspect he did, and I would have made some corrections, particularly to the way in which the Bishop was described, and the way in which I believe the Episcopal Corporation was ... described. So I would have at that time, had an opportunity of ... looking at the document that was presented to me by Malcolm. ... I have no reason to believe that ... that document ... that I looked at in draft is not one and the same document that was signed ... but I don't know

that for a fact. ... also I can indicate to you that ... the word criminal in paragraph two of the document, could have been there at the time, and ... I certainly did not catch it ...

It is apparent from this description that Mr. Leduc was involved in the drafting process and that a paper trail of draft versions of the document at the centre of the investigation probably existed. Detective Inspector Smith testified that he did not think it was important to examine the faxes going back and forth between the lawyers nor any notes the lawyers may have made during this time period. I disagree. In my view, reviewing the drafts exchanged between the lawyers could have been of great assistance in determining who had inserted and who had reviewed the illegal clause.

Mr. Leduc's own statements indicate that he did know that a settlement could not legally terminate criminal proceedings and that he was aware of the issue. Nevertheless, Detective Inspector Smith conducted the interview as though Mr. Leduc was a witness rather than a potential suspect. The recorded portion of the interview was only twelve minutes long. There was a twenty-six-minute gap in the middle of the interview that was not part of the recorded statement. Unfortunately, Detective Inspector Smith again took no notes of this discussion. During the interview, Detective Inspector Smith simply asked what happened and allowed Mr. Leduc to tell his story. Detective Inspector Smith did not challenge Mr. Leduc's version of the events; he did not ask Mr. Leduc follow-up questions about the drafting of the release; he did not confront him with the information provided by Nancy Seguin; nor did he ask why the Diocese was willing to pay thousands of dollars without a lawsuit underway or any formal threat of legal action.

It is not within my mandate, and I do not wish, to make any finding as to whether Mr. Leduc inserted the illegal clause in the settlement agreement with David Silmsen. It is clear to me, however, that Detective Inspector Smith did not sufficiently probe Mr. Leduc's involvement. He was not assertive in the interview with Mr. Leduc, did not attempt to obtain search warrants for Mr. Leduc's files relating to this matter, and failed to interview any of Mr. Leduc's staff. Further investigation might have uncovered important information. Further preparation and consultation with others who had investigated lawyers would probably have been helpful.

Interview of Bishop Eugène LaRocque

Detective Inspector Smith and Detective Constable Fagan interviewed Bishop LaRocque on September 12, 1994, for one hour and fifteen minutes. The first part of the interview dealt with the background of David Silmsen's complaint. The Bishop was then cautioned and questioned about the settlement document.

Detective Inspector Smith testified that he spent a fair bit of time preparing for this interview. He reviewed statements, notes, and the Diocesan protocol. Having reviewed the transcript, I consider this interview to have been considerably more thorough than the one he conducted with Mr. Leduc.

During the interview, Detective Inspector Smith questioned the Bishop on a number of topics. He asked the Bishop about the alleged admission made by Father MacDonald and reported to Chief Shaver. The Bishop stated that Father MacDonald never admitted to any sexual contact with young people. Detective Inspector Smith also put to the Bishop the comments made by Nancy Seguin. The Bishop denied telling her that he paid the money to keep Mr. Silmsr from continuing with the criminal charges. Similarly, when Detective Inspector Smith questioned the Bishop about inconsistencies between his version of the events leading up to the settlement and those of Malcolm MacDonald and Jacques Leduc, the Bishop maintained that he had been convinced by the lawyers to enter the settlement and would not have agreed had he known about the illegal clause.

After testifying about these inconsistencies, Detective Inspector Smith was asked if he found it suspicious that the Bishop had met with Chief Shaver, met with officials from the Children's Aid Society, and then held a press conference, all to discuss aspects of the settlement, yet without unsealing the settlement documents to confirm what it said. He answered, "It's easy to be suspicious about everything, but—but people make honest mistakes." Detective Inspector Smith testified that generally he found the Bishop to be truthful and forthright. He then acknowledged in his testimony that "not opening the very documents in question is something that would cause some suspicion." After reviewing the investigation documents and listening to his testimony, Detective Inspector Smith's suspicions appear to have been much more pronounced when he testified then during his investigation.

Interviews of Other Diocesan Officials

Detective Inspector Smith and Detective Constable Fagan interviewed Mr. Gordon Bryan, the Bursar of the Diocese, on September 13, 1994, and obtained the envelope containing the original settlement documents. The officers also took an eight-minute taped statement. In the interview, Detective Inspector Smith asked questions regarding the cheque that Mr. Bryan provided to Mr. Leduc and the envelope he received from Mr. Leduc shortly thereafter. Unfortunately, in my view, Detective Inspector Smith did not ask what Mr. Bryan knew about the settlement, including whether he had any information about the source (or sources) of the payment.

Detective Constable Fagan interviewed Father Denis Vaillancourt in September and Monsignor Donald McDougald in October, primarily regarding the Diocese's

response to David Silmsers's complaint and the minutes of the meeting held with Mr. Silmsers in early 1993.

Interview of Father Charles MacDonald

In the previous section, I described Detective Constable Fagan's interview with Father MacDonald during the 1994 investigations. As mentioned, Detective Constable Fagan failed to ask Father MacDonald any questions with respect to the conspiracy and obstruction of justice investigations. In my view this was a significant oversight. Father MacDonald was the direct beneficiary of the settlement agreement, and he should have been questioned as to his knowledge of and involvement with it.

Statements From Other Lawyers

Interview of Sean Adams

Detective Inspector Smith met with Sean Adams on September 13, 1994. Mr. Adams had provided Mr. Silmsers with independent legal advice on the settlement and was being interviewed with respect to the allegations of obstruction of justice. Detective Inspector Smith said Mr. Adams was cautioned because his name appeared on the settlement document.

Mr. Adams advised that this was not his normal area of practice and that he did not recognize the significance of the clause regarding the termination of the criminal process. Detective Inspector Smith did not ask why he agreed to act for Mr. Silmsers and provide advice when he was not familiar with this area of law. Having reviewed the interview statement and hearing Detective Inspector Smith's evidence about the interview, I again point out that further preparation and perhaps consultation with others who had investigated lawyers would probably have been helpful.

With respect to the preparation of the settlement, Mr. Adams could only advise that Malcolm MacDonald provided the document to him. He could not say who prepared it.

Interview of Malcolm MacDonald

The final interview in the investigation was that of Malcolm MacDonald on October 28, 1994. Detective Inspector Smith cautioned Mr. MacDonald because his signature was on the document. The taped interview was approximately one hour in length. Detective Inspector Smith described Mr. MacDonald as "a hard man to pin down" and "as slippery as an eel."

Mr. MacDonald stated that both he, on behalf of Father Charles MacDonald, and the Bishop were reluctant to make any settlement. He suggested it was Mr.

Leduc who pushed for a settlement. Mr. MacDonald's account of the process of drafting the release was similar to Mr. Leduc's.

Significantly, Malcolm MacDonald suggests in his statement that, in his view, the understanding among the parties was that the settlement would conclude both the civil and criminal proceedings. He also suggests that this would have been clear to Crown Attorney Murray MacDonald when he discussed the proposed settlement with Murray MacDonald before it was finalized.

Detective Inspector Smith formed the opinion, having interviewed the three lawyers involved in the settlement, that Malcolm MacDonald was the least credible.

Conclusion of Investigations

Detective Inspector Smith and Detective Constable Fagan prepared the Crown briefs in November 1994. Detective Inspector Smith reviewed the rough versions but did not think he reviewed the finished versions because there was some rush to get them to the Regional Director.

In the synopsis of the conspiracy brief, Detective Inspector Smith stated that the OPP had found "no evidence" to support the allegation that an agreement had ever been reached by the Cornwall police, the Crown attorney and the Diocese to not proceed with charges in the David Silmsen matter. Detective Inspector Smith agreed that his decision that there were no reasonable and probable grounds in relation to conspiracy "was not a close call."

Significantly, in the obstruction synopsis, nothing singles out Malcolm MacDonald as the target of the investigation. The synopsis states:

This document [the settlement agreement] was prepared, and reviewed by three practicing lawyers for the Province of Ontario.

It is difficult to understand how three knowledgeable, and experienced solicitors, could condone, and approve of such a document, not realizing Section two of the contract clearly obstructs justice.

Peter Griffiths, Director of Crown Operations, Eastern Region, concluded that the evidence in the conspiracy brief did not reveal criminal activity. No charges were laid (see Chapter 11, "Institutional Response of the Ministry of the Attorney General"). In relation to the obstruction brief, Mr. Griffiths advised Detective Inspector Smith that there might be grounds to charge Malcolm MacDonald and that he was going to consult with another Crown. On January 30, 1995, Detective Inspector Smith spoke to Mr. Griffiths, who indicated that charges should be laid against Mr. MacDonald for obstruction of justice.

Malcolm MacDonald was charged by the OPP with attempt to obstruct justice on February 3, 1995. The OPP prepared and issued a press release about the arrest. Detective Inspector Smith prepared a draft and sent it to Orillia within hours of Mr. MacDonald being charged.

The details of the prosecution are set out in Chapter 11. I note here that the OPP did have some continuing involvement in gathering evidence. In early January 1995, Jacques Leduc, upon the request of Detective Constable Fagan, sent a letter enclosing a redacted release that he had on file from a previous settlement in a Quebec matter where he was acting for the victim. He specified to Detective Constable Fagan that he would not have faxed this document to Malcolm MacDonald because Mr. MacDonald did not read French. Accordingly, this was not one of the documents that were exchanged between Mr. Leduc and Mr. MacDonald during the preparation of the David Silmser settlement.

Detective Inspector Smith told Mr. Griffiths of the release precedent when they spoke on January 30 and advised that it did not contain any mention of criminal matters. Unfortunately, it appears clear from the transcript of the Malcolm MacDonald court proceedings that the Crown attorney assigned to the case was under the impression that the French precedent provided to the OPP by Mr. Leduc was the same document that Mr. Leduc had sent to Mr. MacDonald as a precedent during the settlement with David Silmser.

On September 12, 1995, Malcolm MacDonald pleaded guilty to unlawfully attempting to obstruct justice and received an absolute discharge.

Flaws in the Conspiracy Investigation

It is apparent that Detective Inspector Smith came to the conclusion early on, and primarily on the basis of his meeting with Chief Shaver, that the CPS was not involved in any conspiracy to effect a civil settlement with David Silmser. Detective Inspector Smith believed that if a conspiracy existed, it had to involve Chief Shaver, and he was convinced Chief Shaver would not have agreed to anything with the Diocese because of his poor relationship with the Bishop. As a result, he did not feel the need to further investigate other officers involved. In my view this was an error and Detective Inspector Smith's starting premise was flawed.

I note that Chief Shaver wrote a letter to Archbishop Carlo Curis after his meeting with Bishop LaRocque stating that the Bishop was "extremely helpful and understanding." He also wrote a letter to the Bishop indicating his pleasure at their meeting. Moreover, there was evidence before Detective Inspector Smith that Chief Shaver and the Bishop did in fact come to an agreement, namely that if Father MacDonald admitted the assault, he would be removed from the

parish and sent to Southdown, a psychological treatment centre for members of the clergy.

This is not to suggest that I believe Detective Inspector Smith came to the wrong conclusion regarding CPS's role in the settlement. I have heard nothing to suggest that the Cornwall Police Service was involved in conspiring with the Diocese to effect a civil settlement with Mr. Silmser or conspiring with the Diocese to terminate the criminal proceedings. I do, however, believe Detective Inspector Smith's conclusion was premature and arrived at without fully investigating the allegations. I point in particular to his failure to formally interview the CPS officers involved, including Staff Sergeant Brunet, Constable Sebalj, and Constable Dunlop.

Flaws in the Obstruction Investigation

Having reviewed the evidence, I find that Detective Inspector Smith and Detective Constable Fagan failed to take the proper investigative steps and employ proper techniques in their investigation of obstruction of justice. In particular, I note a lack of rigour in confirming the information provided to them by witnesses.

It appears that Detective Inspector Smith relied almost exclusively on the statements taken from the potential suspects and witnesses as the foundation for this investigation. He made no request of Mr. Leduc for any documents or notes in his possession relevant to the settlement. I note that Mr. Leduc subsequently provided a copy of the draft release with handwritten notations in a civil proceeding. This was never provided to the OPP, and would have been of far more use than the generic precedent Mr. Leduc sent to them. Detective Inspector Smith acknowledged at the hearing that he would have liked to have seen this during his investigation and that it would have led him to question Mr. Leduc more carefully.

Nor did Detective Inspector Smith ask Malcolm MacDonald to provide certain relevant documentation in his possession, despite the fact that during the interview he actually mentioned his notes and his deposit book as places where there might have been further information.

Detective Inspector Smith testified that he was satisfied with having obtained the original settlement agreement because it made his case. He had Malcolm MacDonald "cold." He believed that evidence of criminal activity on the part of the other lawyers could be uncovered at Mr. MacDonald's trial. Because Mr. MacDonald pleaded guilty, there was no trial and apparently no follow-up by Detective Inspector Smith.

This is consistent with Detective Inspector Smith's testimony that from early in the investigation, Malcolm MacDonald was his prime target. However, it is somewhat incongruent with the conclusion in the Crown brief synopsis, which does not differentiate among the lawyers in relation to their involvement with the settlement.

I believe that some of the shortcomings in this investigation can be explained by the investigators' lack of knowledge about how lawyers operate. A number of claims made by the lawyers involved should have raised Detective Inspector Smith's suspicions. I am thinking, for example, of Mr. Leduc's claim that he delivered a cheque to Mr. MacDonald and authorized its release to Mr. Silmsner without reviewing the final release documents, not even to confirm they were signed.

In addition, Detective Inspector Smith cited solicitor-client privilege as one reason he did not request the lawyers' files. While lawyers' communications with clients are usually confidential, an exception exists where those communications are criminal themselves or made in furtherance of a crime.

Accordingly, I recommend that if not already established, a procedure should be put in place to ensure OPP officers investigating lawyers as suspects have specialized training and knowledge, or are able to consult with someone who does, such as a Crown attorney in the Special Prosecutions Unit.

Final Comments on the 1994 Investigations

The Mandate

The foundation of the three investigations was the illegal settlement with David Silmsner. There was inevitable overlap between the witnesses, suspects and illegal acts in the three investigations. It was Detective Inspector Smith's understanding that the terms of the investigation were in large part framed by the media. While he did not think this caused any detriment to his investigation, Detective Inspector Smith did agree that in hindsight, it would have been easier for him to have simply approached this as an investigation into an illegal settlement and gone from there. I agree, as I have set out in the section relating to the mandate Detective Inspector Smith was given, "Commencement of Detective Inspector Tim Smith's 1994 Investigations."

First Press Release

Following the receipt of regional Crown Attorney Griffiths' opinion letters on December 21, 1994, advising that there were no reasonable and probable grounds in either the Father Charles MacDonald sexual abuse investigation or the conspiracy investigation, Detective Inspector Smith prepared a draft press release. Mr. Griffiths also had some input. The draft was then sent to the OPP's media staff, who released the final version.

Both the draft sent by Detective Inspector Smith and the version released to the public address only two of the three investigations Detective Inspector Smith conducted in 1994. The release is titled "No Charges Laid in Alleged Conspiracy" and advises that no grounds exist "to lay charges against a Cornwall priest in the

alleged assault, nor to lay charges in the alleged improper relationship between the Diocese and the Cornwall Police.” It makes no reference to the illegal settlement or the obstruction of justice investigation, which was still ongoing at that point and, as set out above, did lead to charges being laid against Malcolm MacDonald.

Detective Inspector Smith agreed that more should have been included in the press release so that public would not have been left with the impression that there was “no issue here.”

In my view, the press release left the impression that Detective Inspector’s nine-month investigation revealed no wrongdoing in relation to the settlement made with David Silmser. This was incorrect and misleading, and demonstrates one instance where the OPP failed to provide appropriate information to the community through the media. The OPP’s relationship with the media is discussed further in the section, “External Pressures: The Media, Websites, and Garry Guzzo.”

Investigation of Milton MacDonald

In early 1994, a criminal investigation was commenced into Milton MacDonald, a former Reeve of Lancaster, Ontario. Milton MacDonald is Crown Attorney Murray MacDonald’s father and Detective Inspector Randy Millar’s father-in-law.

Background

Milton MacDonald had been investigated for and convicted of child sexual abuse in the late 1960s or early 1970s. His wife was aware of the incident; his children, including Murray MacDonald and Detective Inspector Millar’s wife, Marlene, were not. Detective Inspector Millar had heard rumours of the allegations as a child. He assumed the MacDonald children knew about these allegations and that they were not discussed. In 1994, neither Murray MacDonald nor Detective Constable Millar had heard any rumours regarding recent misconduct by Milton MacDonald prior to C-91 coming forward with allegations.

The MacDonald Family Learns of the Allegations

In the early evening of February 11, 1994, Murray MacDonald received a telephone call from his father. According to Murray MacDonald’s statement to the police five days later, his father said that a man, C-91, had called to tell him that he had been instructed by his parents to give a statement to a local OPP officer, Constable Hugh McClement, by 6:00 p.m. that day. C-91 said his parents told him “person[s] who don’t act properly with children should be reported.”

After the call from his father, Murray MacDonald questioned whether this might be an extortion attempt. He called back his parents to ask if they thought money was involved. During this call, his mother advised him of Milton MacDonald's previous conviction. Murray MacDonald then contacted his sister, Marlene (Detective Inspector Millar's wife), because he "felt he should share the information with a family member." He asked Detective Constable Millar to join the call.

According to Murray MacDonald, he was cognizant of "the precarious position" both he and Detective Constable Millar were in with respect to this complaint, given their relationship with Milton MacDonald and their professional positions. He advised Detective Constable Millar in their very first conversation regarding the matter that if a complaint was reported, Detective Constable Millar ought to ensure that the District Commander, Superintendent Carson Fougère, was immediately made aware of the situation. Detective Constable Millar contacted Constable McClement that evening, who confirmed that he had not received a complaint. Detective Constable Millar advised Murray MacDonald of this fact.

The following day, February 12, 1994, a family meeting was arranged among the siblings. At the meeting, Detective Constable Millar suggested to the family that they go to see C-91 to "confront him to see what he was going to do with his complaint." According to Detective Constable Millar, "everyone seemed to think that since there had been no formal complaint that it might be better to leave it alone for now." Detective Inspector Millar testified that Murray MacDonald would have been part of any discussions that day.

Detective Constable Randy Millar Meets With C-91's Father

The following day, February 13, 1994, Detective Constable Millar and Murray MacDonald spoke just before Murray MacDonald left for the Royal Ottawa Hospital to seek to have his father admitted. At this time, Detective Constable Millar said that he was going to see C-91's father. Murray MacDonald told Detective Constable Millar that he trusted his judgment and that whether or not to speak to C-91's father was his call. Either in this or an earlier conversation, Murray MacDonald told Detective Constable Millar to be careful in contacting C-91's father. Detective Constable Millar responded that he thought he could make contact without compromising his position.

While Murray MacDonald was in Ottawa, Detective Constable Millar met with C-91's father at the officer's home. The two had been neighbours for a number of years and knew one another. Detective Constable Millar described his conversation with C-91's father as follows:

I told [C-91's father] that I was concerned that maybe something had happened and that I wanted to get to the truth to find out if this was a criminal or moral issue. I told him that it hinged on the age of [C-91] at the time. That if they were adults it would be a moral issue but if [C-91] was younger that perhaps it would be a criminal issue.

Detective Inspector Millar did not see how his speaking with C-91's father could be perceived as using his position as a police officer in an inappropriate way. He testified that he was trying to "get to the truth of whether this actually happened or not and it did happen and we turned him in."

Given Detective Constable Millar's position as a police officer and his family relationship with Milton MacDonald, it is unfortunate that he chose to visit C-91's father. This is mitigated, however, by the fact that he and C-91's father had been neighbours and were on good terms. In addition, I think it is clear from the officer's subsequent actions in reporting the complaint that he did not intend to use his position to attempt to conceal the matter or to prevent a proper investigation.

Detective Constable Randy Millar Reports Allegation to Superintendent Carson Fougère

According to Detective Constable Millar's statement, after this meeting, he was "feeling very bad about the situation," so he called Superintendent Fougère and advised him of what had occurred to date. Superintendent Fougère said that the matter would have to be investigated. Detective Constable Millar then received a call from C-91's father, who told him that Milton MacDonald had molested C-91 when C-91 was fourteen years old. According to Detective Constable Millar's statement, he told C-91's father that he should not hear any more but would arrange for outside investigators to be assigned. He then called Superintendent Fougère back to advise him of this call.

Chief Superintendent Fougère recalled that Detective Constable Millar made it clear that he wanted the matter properly and transparently investigated and asked the District Commander to assign an outside Detective Inspector. As a result, Superintendent Fougère called the Director of the OPP Criminal Investigation Branch to request that the matter be investigated by that branch. Chief Superintendent Fougère did not recall Detective Constable Millar advising him of his conversations with C-91's father.

In his statement, Detective Constable Millar said that he eventually got hold of Murray MacDonald and told him that an officer from outside the area would be assigned to perform an investigation.

In his testimony before me, Murray MacDonald recalled that he and Detective Constable Millar agreed that the officer would report the complaint to the OPP

before Murray MacDonald took his father to the hospital. However, I prefer the accounts of the events given directly after the disclosure in February 1994 and find that Detective Constable Millar made the decision to notify Superintendent Fougère after his first conversation with C-91's father, before any complaint was made. Still, it appears that from the outset, Murray MacDonald was rightly of the view that any complaint ought to be referred to outside investigators. Accordingly, it appears likely that Detective Constable Millar's decision to call Superintendent Fougère was based, at least in part, on Murray MacDonald's prior advice to him. In any event, it is clear that the allegation was initially disclosed to Detective Constable Millar by Murray MacDonald, albeit in his capacity as a family member rather than as a police officer, and it was that disclosure that set in motion the events leading up to Detective Constable Millar's report to Superintendent Fougère.

OPP Interaction With the Children's Aid Society (CAS) During the Investigation

On March 4, 1994, CAS social worker Bill Carriere contacted the OPP after hearing on the news that a Lancaster-area man was suspected of child sexual abuse. As discussed in Chapter 9, on the institutional response of the Children's Aid Society, the CAS had already heard from CAS employees that there were rumours about Milton MacDonald in the Lancaster community. According to Mr. Carriere's notes, Sergeant Norm Duhamel advised him that the OPP were investigating a matter related to an individual in the Lancaster area but he was not at liberty to give Mr. Carriere details. Sergeant Duhamel said that the matter related to historical sexual abuse and did not involve children currently under the age of sixteen, and that there was no indication that the accused was in a position of authority with children or that any children were currently at risk.

On March 30, 1994, Mr. Carriere received a call from Constable Ben Beattie advising that the OPP had received information about a child, currently fourteen, who was allegedly abused when he was thirteen. After discussion, the two agreed that the OPP would proceed without the involvement of the CAS and update the CAS on progress.

On April 11, 1994, Mr. Carriere called the OPP for an update on the victim interview. He was provided with information and told that he would be provided with the victim's statement. He was also told that he would be provided with a list of victims' names so that he could cross-check CAS records. On April 19, 1994, Mr. Carriere was informed that the OPP would not release the victims' names to CAS. He was not given an explanation.

It is difficult to understand the OPP's concerns about providing the CAS with further details in this case. I neither heard nor saw any reason not to disclose

the information that had been promised to Mr. Carriere. Indeed, the failure to disclose prevented the possibility of a joint investigation with the CAS and prevented the CAS from providing any victim assistance it might have wanted to facilitate. Moreover, cooperation with the CAS might have assisted the OPP in finding other victims.

I want also to comment here more generally on the problems that arise from the lack of clarity regarding the duty to report in cases of historical sexual abuse. This situation reinforces the need to have the *Child and Family Services Act* duty-to-report clause amended to specifically include historical sexual abuse. Public institutions would therefore need to amend their existing protocols to reflect this amendment.

Arrest and Prosecution

In May 1994, Milton MacDonald was charged with eleven offences relating to the sexual molestation of eight young boys over a thirty-year period. He pleaded guilty to nine of the charges and was sentenced to a period of incarceration of twenty-two months. An outside Crown attorney handled the matter.

1994 Investigation of Nelson Barque

As discussed in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services, Nelson Barque was a probation and parole officer in Cornwall from August 19, 1974, to May 4, 1982. He was the probation officer for Robert Sheets, C-44, and Albert Roy, all of whom alleged that he sexually abused them. He also allegedly abused C-45, a probationer of Ken Seguin, at the probation office. Chapter 5 and Chapter 6, on the institutional response of the Cornwall Community Police Service, describe Mr. Barque's background, as well as the investigations conducted in 1982 and in 1994 into allegations that he sexually abused Mr. Sheets and C-44. The Ontario Provincial Police (OPP) became involved in 1994, when Mr. Roy made a complaint against Mr. Barque. In 1998, the OPP investigated Mr. Barque again, this time in relation to allegations made by C-45 and Mr. Sheets. That investigation will be discussed in a later section of this chapter.

Complaint Made by Albert Roy

In November 1994, Albert Roy contacted the Cornwall Police Service (CPS) and alleged that Nelson Barque and Ken Seguin sexually abused him when he was on probation in the mid-1970s. Mr. Seguin, who committed suicide in November 1993, was Mr. Roy's probation officer in 1977 when Mr. Roy was sixteen years old. Mr. Roy testified that after about three months, Mr. Barque took over as his

probation officer while Mr. Seguin went on vacation. Mr. Roy alleged that it was during this period that Mr. Barque sexually abused him. He said that when he reported the abuse to Mr. Seguin, Mr. Seguin also began to abuse him sexually.

As discussed in Chapter 6, Mr. Roy gave a statement to CPS Constable Heidi Sebalj on November 24, 1994. Staff Sergeant Luc Brunet of the CPS contacted Detective Inspector Tim Smith and Detective Inspector Burns of the OPP's Long Sault Detachment because the alleged abuse might have occurred outside of CPS jurisdiction. As detailed earlier in this chapter, the OPP had also been involved in the investigation related to Mr. Seguin's death and possible extortion by David Silmser earlier in 1994.

On November 25, 1994, Constable Sebalj and OPP Detective Constable Chris McDonnell attempted to identify Mr. Barque's residence to determine if it was outside of CPS jurisdiction. Ultimately, the OPP and CPS decided to jointly investigate the allegations, and OPP Detective Constable William Zebruck was assigned to work in collaboration with CPS Constable Heidi Sebalj.

Information Sharing Between Constable Heidi Sebalj and Detective Constable William Zebruck

Constable Sebalj briefed Detective Constable Zebruck on November 29, 1994. She contacted C-44 on December 1, 1994, to obtain a witness statement but he was adamant he did not want to be involved in the police investigation. She obtained a copy of Mr. Barque's file from the Cornwall Probation Office as well as a copy of the Ministry of Correctional Services' investigation into allegations of unprofessional conduct by Mr. Barque. Constable Sebalj provided copies of these materials to Detective Constable Zebruck.

Detective Constable Zebruck testified that he and Constable Sebalj shared information during the joint investigation and for a time after he arrested Mr. Barque and laid charges. However, it seems that Detective Constable Zebruck either did not receive or did not follow up on information from Constable Sebalj regarding C-44, although he noted he may have attended the interview. Similarly, Detective Constable Zebruck testified that he and Constable Sebalj did not discuss her investigation of complaints by Mr. Silmser, who had also made allegations against Mr. Seguin. This is unfortunate. Corroborative evidence is difficult to find in cases of historical sexual assault. Where it is found, it should, of course, be shared with all relevant parties.

Interviews of Robert Sheets and C-90

Early in the investigation, Detective Constable Zebruck met with Robert Sheets at his parents' residence. According to Detective Constable Zebruck, Mr. Sheets alleged that he was a victim of Mr. Barque but he did not want to cooperate

with the investigation and refused to provide a statement. The date of the meeting is unclear as there is no record of it in Detective Constable Zebruck's notes. The officer testified that he would not take notes if he did not feel that the information was of interest or if the person giving the information did not want to be a witness.

Detective Constable Zebruck interviewed C-90 on December 3, 1994, but did not take a recorded statement. According to Detective Constable Zebruck's notes, C-90 alleged that Mr. Barque kept pornographic magazines in the locked left-hand drawer of his desk, that he always kept his office door locked, and that he once walked in on Mr. Barque engaged in a sexual activity with Mr. Sheets.

Multiple Interviews of Albert Roy

Albert Roy gave three statements over the course of the CPS/OPP investigation. On December 6, 1994, OPP Detective Constable McDonell interviewed Mr. Roy at Constable Sebalj's office. It is unclear how Detective Constable McDonell became involved in the investigation and why this second interview of Mr. Roy was necessary. Mr. Roy provided essentially the same information regarding his abuse by Mr. Seguin and Mr. Barque as he had provided to Constable Sebalj on November 24, 1994.

Mr. Roy testified that he did not understand why he was being interviewed a second time but that he was told it was regarding someone else's allegations of sexual abuse against Mr. Seguin. Mr. Roy also said he experienced anxiety at being interviewed by multiple police officers and that he found Detective Constable McDonell to be particularly intimidating:

And I felt intimidated by him. I felt belittled by him. I felt that he didn't care. He placed me in a position that was—physically he placed me in a position in front of him that was intimidating and made me feel very uneasy, and he was very bold to me, very brisk, and he had no patience for whenever I had a hard time answering one of his questions ... He wanted to know details and he pushed it.

After I talked to this police officer, I was sick.

Through no fault of his own, Detective Constable McDonell's body language and mannerisms clearly made Mr. Roy uncomfortable. This complaint reinforces the need for training on the sensitivity required when investigating allegations of sexual assault. I reiterate here the importance of proper training and periodic refresher courses or seminars for all officers involved in these investigations.

Mr. Roy was interviewed for a third time on December 16, 1994; this time by Detective Constable Zebruck at the Cornwall Police Service. Detective Constable Zebruck testified that he conducted this interview to “make sure I—you know, he didn’t have anything further to add to what he already said.” He conceded that no new information was gleaned from the third interview and that it was probably unnecessary.

Although sometimes necessary because complainants will only disclose the full extent of their abuse over time, taking multiple statements from a complainant should be avoided where possible. Providing these statements can re-traumatize a victim and increases the risk of inconsistencies in a complainant’s evidence that could be exploited by defence counsel at trial.

Incident in the Car Between Detective Constable William Zebruck and Albert and Vicky Roy

After taking a statement from Mr. Roy on December 16, 1994, Detective Constable Zebruck asked him to identify Mr. Barque’s residence. Mr. Roy testified that while they were driving there, Detective Constable Zebruck commented that Mr. Barque’s arrest would be hard on his family. Mr. Roy recalled Detective Constable Zebruck saying that Mr. Barque would likely commit suicide:

He used, I guess, the official term for oral sex and he said, “What’s a little,” the word, and then he said—I believe his exact wording was, “What’s the harm in a little,” again the technical word he used for oral sex “going to do?”

In his testimony, Detective Constable Zebruck was certain he would not have made this sort of comment, but he did not independently recall not saying it. Vicky Roy corroborated her husband’s version of the incident and stated that she encouraged him to make a complaint to Detective Constable Zebruck’s superiors. Mr. Roy testified that when he arrived home, he contacted the Long Sault Detachment and asked to speak to Detective Constable Zebruck’s supervisor. Mr. Roy said that the person he spoke to told him he would “take care of it.” Mr. Roy testified that he heard nothing further about the matter.

It is evident to me that Roys are still bothered by these alleged comments. Having heard the Roys’ version of the event and Detective Constable Zebruck’s testimony, I believe some sort of comment was made that upset the Roys. Police officers should be sensitive and supportive when dealing with victims, particularly victims of sexual assaults and abuse.

Interviews of Probation Staff

Between January 3 and February 6, 1995, Detective Constable Zebruck interviewed a number of people—including Carole Cardinal, Louise Quinn, Marcelle Léger, Gerald Desnoyers, Peter Sirrs, and Jos van Diepen—who were employed at the Cornwall Probation Office at the time that Mr. Barque worked there. At the hearings, Detective Constable Zebruck said he did not know if he took recorded statements from all of these individuals. Ms Quinn, Ms Léger, Mr. Sirrs, and Mr. van Diepen could even not recall being interviewed by Detective Constable Zebruck when questioned before this Inquiry.

It is unclear from Detective Constable Zebruck's notes whether he followed up on information obtained during these interviews. For example, Ms Quinn gave the officer the names of three people who might be able to assist in the investigation as potential victims or witnesses. There is no indication in Detective Constable Zebruck's notes that any of these people were contacted. He explained during his testimony that at the time of the investigation, he only made note of a contact with an individual if that person had "something to contribute to the investigation."

Detective Constable McDonell had interviewed most of the staff of the Cornwall Probation Office in February 1994 during the investigation of David Silmsen for extortion. He testified that as a result of the statement he had taken from Mr. van Diepen, he became aware of allegations of inappropriate sexual contact between Mr. Barque and his clients. As noted in the section on that investigation, the allegations made against Mr. Barque were not followed up.

Detective Constable Zebruck testified that Detective Constable McDonell did not brief him, nor did he know that Detective Constable McDonell had previously interviewed probation office staff. Accordingly, when conducting his own interviews, Detective Constable Zebruck did not have the statements taken in February 1994. It is unfortunate that Detective Constable McDonell did not tell Detective Constable Zebruck about these interviews. He should have. Better communication between these officers could have reduced the number of interviews Detective Constable Zebruck had to conduct and it could have improved the quality of information he obtained in his interviews.

Detective Constable Zebruck testified that it occurred to him during the investigation that Mr. Barque might have sexually abused other probationers while employed by the Ministry of Correctional Services. However, he never raised this possibility with his superiors, nor did he discuss it with Constable Sebalj or Detective Constable McDonell.

Deficiencies in the Investigation

On January 3, 1995, Nelson Barque was charged with indecent assault and gross indecency in relation to incidents involving Albert Roy. Mr. Barque pleaded guilty to the indecent assault of Mr. Roy on July 10, 1995, and was sentenced to four months of incarceration and eighteen months of probation.

Despite these results, in my view the 1994 investigation of Mr. Barque displayed a disappointing lack of thoroughness. Detective Constable Zebruck failed to take proper investigative steps and employ proper techniques, including not taking proper actions in the taking of statements, the identification of corroborative evidence, and the identification of, and follow-up with, further possible victims.

In particular, I point to Detective Constable Zebruck's inadequate note taking and his failure to follow up on leads that might have revealed further victims of Mr. Barque, such as those individuals whose names were given to him by probation office staff, or other possible perpetrators, such as Richard Hickerson and Ken Seguin.

As discussed, Mr. Roy alleged that Mr. Seguin sexually abused him. It does not appear that Detective Constable Zebruck took any investigative steps to follow up on this allegation. C-90 told Detective Constable Zebruck that Mr. Hickerson was buying alcohol for and having a sexual relationship with Robert Sheets. Although Mr. Seguin was dead at the time Detective Constable Zebruck conducted his investigation, Mr. Hickerson was not. Detective Constable Zebruck did not pass on this allegation to the CPS, the Children's Aid Society, or his superiors at the OPP, nor did he flag Mr. Hickerson's name in the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) system. As will be discussed in a later section, Project Truth investigated Mr. Hickerson in 1998. He was about to be charged, but committed suicide before the arrest date. The allegations made against him might have become known earlier had Detective Constable Zebruck conducted a more thorough investigation or alerted the appropriate authorities in 1994.

1995 Investigation of Father Charles MacDonald

As previously discussed, in 1994, Detective Inspector Tim Smith and Detective Constable Michael Fagan conducted an investigation into allegations of sexual abuse made by David Silmsier against Father Charles MacDonald. The officers determined that they lacked reasonable and probable grounds for charges at that time. The fact that Mr. Silmsier was the sole complainant was a factor in this

decision. In 1995, the Ontario Provincial Police (OPP) learned of additional complainants, and the investigation was reopened.

Albert Lalonde

On May 1, 1995, Detective Constable Fagan advised Detective Inspector Smith of a new complainant against Father MacDonald named Albert Lalonde. Detective Constable Norman Hurtubise had already interviewed Mr. Lalonde at the Long Sault Detachment. On May 12, 1995, Detective Constable Fagan took another statement from Mr. Lalonde.

Detective Inspector Smith advised David Silmsen's lawyer, Bryce Geoffrey, of the new alleged victim during a phone call on May 10, 1995, and told Peter Griffiths, Director of Crown Operations, Eastern Region, on May 19. Detective Inspector Smith does not have any further notes regarding Mr. Lalonde and could not recall during his testimony before me why no further action was taken in the spring of 1995.

On August 16, 1995, Detective Constable Fagan wrote to Detective Inspector Smith enclosing copies of the statements regarding "the last complaint against Father Charlie." He said he was sending a copy to Crown Attorney Curt Flanagan. Mr. Flanagan testified he could not recall whether he had been asked for or had given a legal opinion.

In 2002, not long after a stay of proceedings was granted in the Father MacDonald trial for charges relating to several other complainants, Mr. Lalonde contacted the Cornwall Police Service to report the abuse he alleged to have suffered from Father MacDonald. The CPS officer assigned to the case asked the OPP for materials from the 1995 investigation. In a letter enclosing Mr. Lalonde's 1995 statements, Detective Inspector Pat Hall advised the CPS that these materials had been sent to Crown Attorney Flanagan on August 16, 1995, for a legal opinion.

It is unclear whether Mr. Lalonde was informed in 1995 that his allegation against Father MacDonald was not being pursued. During his interview with the CPS in 2002, he seemed uncertain as to the status of his case with the OPP.

Albert Lalonde's 2002 allegations are discussed further in Chapter 6, on the institutional response of the Cornwall Community Police Service. One of the alleged incidents occurred outside CPS jurisdiction and so was investigated by the OPP in 2002. In the course of that investigation, Detective Constables Don Genier and Joe Dupuis interviewed Mr. Lalonde and took statements from his brother, ex-wife, and daughter. They also spoke to and obtained notes from Mr. Lalonde's psychiatrist. The officers determined that they did not have reasonable and probable grounds to lay charges. Crown counsel who reviewed the brief agreed, as discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

I wish to note here, however, that the fact this investigation resulted in no charges appears to have been a factor in the decision not to lay charges in both the CPS and OPP investigations in 2002.

Unfortunately, it is difficult to comment on the OPP's 1995 investigation because of the almost complete lack of documentation regarding this matter.

John MacDonald's Complaint Referred to the OPP

On August 23, 1995, Detective Constable Michael Fagan told Detective Inspector Tim Smith that David Silmsner had called Detective Constable Fagan, Detective Constable Chris McDonell, and the CPS to say he had located another alleged victim of Father Charles MacDonald from "out west." Detective Constable Fagan also said that Inspector Richard Trew of the CPS had a letter from the same victim, John MacDonald, regarding an alleged sexual assault by Father MacDonald. The letter, dated August 11, 1995, was sent to Father Kevin Maloney, who turned it over to the CPS on August 15, 1995.

Following discussions between Detective Inspector Smith and Inspector Trew, it was decided that the OPP would take this case for three reasons. First, the OPP had already conducted extensive background research on Father MacDonald in its previous investigation. Second, there was some potential for conflict for the CPS because John MacDonald appeared to have some connection to David Silmsner, who had recently sued the CPS. Finally, it seemed from Mr. MacDonald's letter that many of the alleged acts occurred in the St. Andrews area, which is OPP jurisdiction. The case was handed over to Detective Inspector Smith on August 25, 1995.

It appears that John MacDonald was not informed of this decision by the OPP. On September 11, 1995, he was advised by CPS Constable David Bough that the OPP would be handling his complaint. On September 12, 1995, Mr. MacDonald and Carson Chisholm visited the Cornwall Police Station and attempted to drop off a copy of a statement Mr. MacDonald had prepared. Though he could not recall exactly what happened at the station, Mr. MacDonald testified that Mr. Chisholm was "abrasive." This is corroborated by a CPS officer's notes from that day, which describe Mr. Chisholm attending at the station "in a very belligerent mood" with Mr. MacDonald. According to these notes, Mr. Chisholm demanded that the police take the statement and "lay a charge immediately."

Two weeks later, on September 25, 1995, John MacDonald met with Richard Abell of the Children's Aid Society. Mr. MacDonald expressed frustration with difficulties he was having in getting his complaint heard. He told Mr. Abell that he was "up in the air" and that "doors were being closed in [his] face." Mr. Abell called Detective Inspector Smith and said that Mr. MacDonald was keen to talk to him. Detective Inspector Smith contacted Mr. MacDonald that same day and

arranged for an interview. Detective Inspector Smith and Detective Constable Fagan took a statement from Mr. MacDonald on September 28, 1995.

It is my view that Detective Inspector Smith should not have waited a month to contact Mr. MacDonald to tell him that he would be taking the case. Had Detective Inspector Smith followed up with Mr. MacDonald sooner, the scene at the Cornwall Police Station might have been avoided.

Father Kevin Maloney Complains of Harassment by David Silmsers and John MacDonald

Detective Inspector Smith later learned that Father Maloney had told the Cornwall Police Service on August 19, 1995, that he had received two telephone calls from Mr. Silmsers and one from John MacDonald and that he wanted them to be told to stop calling him until the investigation was complete. Constable Emma Wilson-King of the CPS contacted both men and asked them not to contact Father Maloney.

Both Mr. Silmsers and Mr. MacDonald testified that they did not understand why they were being told not to contact Father Maloney as they did not think they were doing anything wrong. In my opinion this led to further confusion and distrust for these complainants with respect to their relationship with the police service. Detective Inspector Smith also became aware that Sean Adams, who had advised Mr. Silmsers in the illegal settlement, was Father Maloney's counsel.

Detective Inspector Smith testified that he tried to put aside these issues and focus on the sexual assault allegation:

Well, it was a rat's nest, to put it bluntly. It was hard to sort out and hard to investigate ... But what I was trying to do is to let all those side issues go aside ... and stay with the sexual assault. And then see what happens; what falls by the wayside after.

Detective Inspector Smith testified that he would not have given the CPS any advice in terms of sensitivity in dealing with sexual assault complainants. He also stated that he thought the CPS's response to the Father Maloney's complaint was reasonable. With the benefit of hindsight, I disagree. The CPS should have addressed Father Maloney's concerns in a manner that better promoted the relationship between the police and the complainants.

Contact Between Alleged Victims of Father Charles MacDonald

It is clear the police knew from the commencement of the investigation that John MacDonald had some connection with Mr. Silmsers. Mr. MacDonald testified that at no time did the OPP tell him not to speak with Mr. Silmsers or to any other

former altar boys. However, during the statement taken by Detective Inspector Smith on September 28, 1995, there was a discussion about Mr. MacDonald's contacts with Mr. Silmsner and how they might affect his credibility. Detective Inspector Smith questioned Mr. MacDonald about the timing of his first contact with Mr. Silmsner and established that it was after he wrote the letter to Father Maloney on August 11, 1995.

While it appears that Detective Inspector Smith did not expressly advise Mr. MacDonald not to communicate with Mr. Silmsner, it is clear Mr. MacDonald understood the dangers of such contact. He told Detective Inspector Smith that he started taking notes after his first call from Mr. Silmsner because "I don't want anybody to think there[']s] an infusion here between the two."

John MacDonald contacted Detective Inspector Smith on a few occasions in October and November 1995 asking for updates on the investigation. According to Mr. MacDonald's notes, it was his understanding that Detective Inspector Smith was waiting to have his statement transcribed.

On November 8, Detective Inspector Smith returned a call from John MacDonald's wife, who told him her husband was upset that he had "heard nothing." Detective Inspector Smith told her that they were attempting to locate the former altar boys Mr. MacDonald had named in his statement. Detective Inspector Smith then spoke directly with Mr. MacDonald. According to Mr. MacDonald's notes, he and Mr. Silmsner were going to meet with C-3, another alleged victim of Father MacDonald, on November 11. Detective Inspector Smith warned Mr. MacDonald that they could jeopardize the case by meeting together.

Detective Inspector Smith's notes state he advised Mr. MacDonald not to discuss evidence or specifics of what happened, and to write down everything that was said. He also told Mr. MacDonald to have C-3 contact the OPP if C-3 wanted to testify.

Complaint on Hold Until After Constable Perry Dunlop's Hearing

In their November 8 conversation, Detective Inspector Smith told Mr. MacDonald that the investigation of his complaint was on hold until after Constable Perry Dunlop's hearing on November 23, 1995. As discussed at length in Chapter 6, Constable Dunlop had been charged under the *Police Services Act* for providing the Children's Aid Society with the statement that David Silmsner gave to the OPP disclosing his allegation of abuse by Father MacDonald.

According to John MacDonald's notes, Detective Inspector Smith also advised him to stay away from Constable Dunlop and his family because they had "their own agenda."

On November 20, 1995, Detective Inspector Smith attended the Long Sault Detachment and was shown a *Standard-Freeholder* article in which Mr. MacDonald quoted Detective Inspector Smith as saying the investigation would

not start until Constable Dunlop was dealt with. Detective Inspector Smith wrote in his notes that this was “not entirely true” and that “Dunlop is now using MacDonald + Silmsner to further his cause.”

The next day, Detective Inspector Smith spoke to lawyer Bryce Geoffrey, who represented Mr. MacDonald, Mr. Silmsner, and C-3, and expressed his displeasure about the news article. He said that from now on he would communicate with Mr. Geoffrey’s clients only through him. On November 23, 1995, Mr. MacDonald called Detective Inspector Smith, who advised him that “any conversation on anything he wanted from me would be done through his lawyer.”

The Crown assigned to prosecute the Father MacDonald case, Robert Pelletier, took a similar approach. After receiving an unpleasant call from Mr. Silmsner, Mr. Pelletier told Mr. Geoffrey that if Mr. Silmsner wanted to communicate with him again, he should do so through his lawyer. This is an example of problems that can arise in the absence of a Victim/Witness Assistance Program (discussed further in Chapter 11, “Institutional Response of the Ministry of the Attorney General”). I realize it may be challenging, but efforts must be made to better understand all complainants.

Detective Inspector Smith met with and interviewed C-3 on November 24, 1995, in the presence of his lawyer, Mr. Geoffrey.

Submission of the Crown Brief

On January 3, 1996, Detective Inspector Smith spoke to regional Crown Peter Griffiths and said that the OPP would have a brief to him within two weeks. In his notes, Detective Inspector Smith wrote that the officers felt that with the two additional victims there were reasonable and probable grounds to lay indecent assault charges against Father MacDonald. The brief was submitted later in January.

Detective Constable Fagan advised Detective Inspector Smith on January 16, 1996, that Mr. Griffiths had told him that the alleged “indecent assault” when C-3 was sixteen years of age was considered consensual and no charges were warranted. The remaining allegations would be reviewed by Crown Pelletier, who was picking up the brief.

Detective Inspector Smith and Detective Constable Fagan had prepared the Crown brief, including the synopsis, together. The portion of the synopsis dealing with David Silmsner is copied almost verbatim from the synopsis in the 1994 brief. Accordingly, the error in the dates of the abuse is reproduced and the synopsis’ conclusion suggests, as it did in 1994, that the officers did not have reasonable and probable grounds. Detective Inspector Smith, however, testified that he was satisfied that they had reasonable and probable grounds, as he had already advised Mr. Griffiths. Detective Inspector Smith’s concern was with reasonable prospect of conviction. He explained:

Once I lay the charges the clock, I say, starts ticking and then the prosecutors decide that there's no reasonable prospect of conviction, they withdraw the charges or they're stayed. I can't revisit those. I can't go back and re-lay those charges, so those victims would never be before—never get before a courts [sic].

Detective Inspector Smith and Detective Constable Fagan met with Mr. Pelletier, whom Detective Inspector Smith had worked with on the St. Joseph Training School case in Alfred, on January 31, 1996. According to Detective Inspector Smith, at the time, Mr. Pelletier was perhaps the most experienced Crown attorney in sexual assault investigations in Canada. At the meeting, Mr. Pelletier was given four briefs: the original investigation of David Silmsner's complaint by the CPS, the investigation conducted by the Ottawa Police Service into the propriety of the Cornwall investigation, materials related to the settlement between Mr. Silmsner and the Church, and materials relating to the complaint by Mr. Silmsner against the CPS and the Crown attorney's office in Cornwall with regard to the initial decision not to lay charges.

On February 7, 1996, Detective Inspector Smith provided Mr. Pelletier with the extortion brief prepared by Detective Inspector Hamelink as well as videotapes of the complainants' interviews.

Robert Pelletier Recommends Charges Be Laid

Detective Inspector Smith and Detective Constable Fagan met with Mr. Pelletier again on February 21, 1996. He had reviewed the briefs and statements and, according to Detective Inspector Smith's notes, it appeared that he would recommend charges.

At this meeting, Mr. Pelletier provided the appropriate wording for the information and provided advice regarding the charges. There was also a discussion about the arrest and the press release. Mr. Pelletier confirmed his opinion that charges should be laid in a letter dated March 5, 1996.

Father Charles MacDonald Arrested

Father MacDonald was arrested on March 11, 1996.

In his opinion letter, Mr. Pelletier also provided advice on the arrest, indicating that it would be sufficient for Father MacDonald to surrender himself and be provided with a summons for the first court date. Detective Inspector Smith said that he was in agreement with Mr. Pelletier about this approach. He rarely "brought anybody in handcuffs into jail or court."

Detective Inspector Smith advised CPS Staff Sergeant Luc Brunet, lawyer Bryce Geoffrey, and Bishop Eugène LaRocque of the impending charges on

March 6, 1996, prior to the arrest. That afternoon, Detective Inspector Smith was contacted by someone from CBC's *Fifth Estate* program who said they had reliable information that charges were going to be laid and asked Detective Inspector Smith to confirm. Detective Inspector Smith testified that he "had an idea" that the source of this information was Constable Dunlop.

A press release confirming that charges had been laid was issued on March 11, 1996. As will be discussed in later sections, further charges were laid against Father MacDonald in 1998 and 2000 as part of the OPP's Project Truth investigation.

C-8's Allegations Against Father Charles MacDonald

After Father Charles MacDonald was arrested in March 1996, an additional complainant, C-8, came forward in January 1997. Before disclosing his allegations of abuse to the Ontario Provincial Police (OPP), C-8 first made these claims to Constable Perry Dunlop of the Cornwall Police Service (CPS) during a private investigation that Constable Dunlop was performing while he was on sick leave. Father MacDonald was charged in 1998 in relation to these allegations, but just before his trial in 2002, C-8 recanted his allegations against Father MacDonald.

C-8 Provides Statements to Constable Perry Dunlop and Others

C-8 contacted Constable Dunlop in early June 1996 in order to tell him about allegations of abuse by Ron Leroux and Marcel Lalonde. Shortly thereafter, C-8 provided a statement to Randy Porter, a retired police officer from Toronto who assisted Constable Dunlop and Charles Bourgeois, Constable Dunlop's lawyer. Mr. Bourgeois testified that he instructed Mr. Porter to take this statement from C-8.

During this interview, C-8 was asked a number of questions about Ken Seguin and about individuals whom he had seen at Mr. Seguin's home. He said he had known Father MacDonald for years and that when he was thirteen years old, Father MacDonald had "made a pass" at him at "St. Clemens Parish."

C-8 provided another statement on December 12, 1996. By this time, C-8 had met with Constable Dunlop on several occasions. In this statement, C-8 alleged he was sexually assaulted by Father MacDonald at St. Columban's Church when he was twelve or thirteen years old. He said Father MacDonald was the first person to sexually abuse him. In this statement he also alleged abuse by Marcel Lalonde.

C-8 provided a third statement on January 23, 1997. In this statement he made an additional allegation against Father MacDonald, claiming that he was abused with a candle at his father's funeral.

This statement was taken on the same day that C-8 had a court appearance for sexual assault charges relating to a teenage girl. Mr. Bourgeois acted as C-8's

lawyer on these charges. Mr. Bourgeois testified that although he recalls the statement and was present for the discussions, he could not remember why the statement was taken on that day.

As discussed further in the section “Interactions between Project Truth and Constable Perry Dunlop,” in March 2002, prior to Father MacDonald’s trial, C-8 told Crown attorneys Lorne McConnery and Kevin Phillips that he wanted to drop the charges against Father MacDonald. He said that the incident at his father’s funeral never happened. He also testified before this Inquiry that the allegations he made against Father MacDonald were false.

C-8 Provides Statements to the OPP

On January 23, 1997, the same day that C-8 gave his third statement to Constable Dunlop, he also attended the Lancaster OPP Detachment with Mr. Bourgeois and read this prepared statement in the presence of Detective Constable Don Genier. According to Mr. Bourgeois, he brought C-8 to the OPP because C-8 wanted to file a criminal complaint against the individuals who allegedly abused him. Detective Constable Genier then conducted two videotaped interviews of C-8: one in respect of his allegations against Mr. Lalonde and another in respect of his allegations against Father MacDonald.

C-8 does not recall the OPP following up with him regarding his allegations about Father MacDonald.

Detective Constable Don Genier Sends Videotape to Detective Constable Michael Fagan

On January 27, 1997, Detective Constable Genier contacted Detective Constable Fagan to advise him of C-8’s video statement and said he would provide a copy. Detective Constable Genier mailed the videotaped interview of C-8 regarding his allegations against Father MacDonald to Detective Constable Fagan on February 10.

According to Detective Constable Genier’s notes, he also informed Detective Inspector Tim Smith that he told Detective Constable Fagan about C-8’s allegations of abuse by Father MacDonald. However, Detective Inspector Smith testified that he does not think he was aware of the January 23 statement taken from C-8. He said he was away for almost three weeks in February 1997.

Father Charles MacDonald’s Preliminary Inquiry

The preliminary inquiry in *R. v. Charles MacDonald* began on February 24, 1997. That evening, C-8 appeared on television and spoke about his allegations against Father MacDonald. As will be discussed in further detail in Chapter 11,

“Institutional Response of the Ministry of the Attorney General,” Crown attorney Robert Pelletier was unaware of C-8’s allegations until the issue was raised the next day in court. As a result of this new development, counsel for Father MacDonald requested an adjournment of the preliminary inquiry. It resumed in September 1997.

According to Detective Constable Genier’s notes, he received a call from Detective Constable Fagan, who was in court, the morning of February 25, 1997. Detective Constable Fagan asked him several questions about C-8’s allegations of abuse by Father MacDonald. He apologized because he thought the video he had received from Detective Constable Genier pertained to Marcel Lalonde.

It therefore appears that Detective Constable Fagan had not reviewed the videotaped statement from C-8 prior to the preliminary inquiry and that neither Detective Constable Fagan nor Detective Inspector Smith had informed Mr. Pelletier of C-8’s allegations.

This information should have been provided to Mr. Pelletier, who probably would have disclosed it to the defence. This may not have avoided an adjournment, but at the very least the Crown would have been fully informed and prepared to deal with the issue at the preliminary inquiry.

Detective Constable Genier later faxed a copy of C-8’s statement to Detective Constable Fagan and met with him and Mr. Pelletier at the courthouse. The three of them then met with defence counsel. Detective Constable Genier answered questions about the events surrounding C-8’s complaint, such as how C-8 became involved with Charles Bourgeois. According to Detective Constable Genier’s notes, he advised the lawyers that when he arrested C-8 he was on the phone with Mr. Bourgeois. He also said that C-8 had mentioned he was friends with Constable Dunlop and had spoken to him about the charges against him involving a teenage girl, and that “disclosure of [C-8]’s abuse soon followed.”

On February 27, 1997, Detective Constable Genier received a call from Detective Constable Fagan advising that Mr. Pelletier wanted C-8 interviewed and had a number of questions that he wanted asked. Detective Constable Genier met with C-8 that day at the Ottawa courthouse cafeteria and took a statement. C-8 recalls that he attended the Father MacDonald preliminary inquiry because Constable Dunlop asked him to go with him for support. He recalls being pulled aside by two OPP officers as he was leaving the courthouse on February 27. He said Constable Dunlop and Helen Dunlop told him to stay away from them, but he gave them an interview anyway.

As will be discussed in the section “Project Truth Investigation of Father MacDonald,” charges were laid against Father MacDonald in respect of C-8’s allegations in January 1998.

Investigation and Prosecution of Marcel Lalonde

Marcel Lalonde worked as an elementary school teacher with the Stormont, Dundas & Glengarry County Roman Catholic Separate School Board from 1969 until 1997, when he was suspended following his arrest on sexual abuse-related charges.

The Cornwall Police Service (CPS) first became aware of and investigated allegations of sexual abuse against Mr. Lalonde in 1989. No charges were laid following the investigation. Mr. Lalonde's name again came to the attention of the CPS in 1994 when it received information from the Ontario Provincial Police (OPP) that David Silmser had told the Children's Aid Society that his former teacher, Mr. Lalonde, had abused him. The allegation was not pursued because of Mr. Silmser's lack of cooperation. These investigations are discussed in Chapter 6, on the institutional response of the Cornwall Community Police Service.

This section focuses on the 1996 investigation of Mr. Lalonde by the OPP, the OPP's interaction with the CPS during its concurrent investigation of Mr. Lalonde, and the disclosure issues that arose during Mr. Lalonde's prosecution.

CPS Refers C-68's Complaint to the OPP

As previously discussed in Chapter 6, in the fall of 1996, probation officer Sue Lariviere informed the CPS that one of her probationers, C-68, had alleged sexual abuse by Mr. Lalonde. Constable René Desrosiers of the CPS was assigned to follow up. Constable Desrosiers informally interviewed C-68 about his allegations on October 30, 1996. C-68 told him that when he was twelve years old, he was sexually abused by his teacher, Mr. Lalonde, during overnight camping trips. Because the abuse disclosed by C-68 took place outside CPS jurisdiction, Constable Desrosiers referred the complaint to the Lancaster OPP.

At the time, Constable Desrosiers was not aware of the previous CPS investigation of Mr. Lalonde. He did not run any background checks on Mr. Lalonde because, he testified, he was turning the matter over to the OPP, which had the same computer system as the CPS and so could run its own search of the Ontario Municipal and Provincial Police Automation Cooperative. Unfortunately, the earlier investigation by the CPS predated this automated system and therefore it contained no record of the investigation.

The fact that a previous investigation had taken place was not discovered until the fall of 1999 when a witness said during a preparation meeting before trial that he had been interviewed by the CPS in the late 1980s about Mr. Lalonde. The files relating to that investigation were found only after a manual search of the CPS's contact cards by the CPS records department and a physical search of the CPS archives by Constable Desrosiers.

Accordingly, when the OPP was referred C-68's complaint in 1996, it had no way of knowing that a prior investigation had taken place. The OPP did not have the advantage of the information gathered by the CPS during the previous investigation.

Investigation of C-68's Complaint and Arrest of Marcel Lalonde

Detective Constable Don Genier of the Lancaster Detachment was assigned to the investigation of C-68's allegations on November 4, 1996. Don Genier joined the OPP on October 16, 1989, and became a member of the Criminal Investigation Branch in October 1993. As discussed in Chapter 12, on process, Detective Constable Genier did not testify at this Inquiry. Information about his investigation into C-68's complaint has largely been taken from his duty notes and his prior testimony in criminal proceedings.

The day of his assignment, Detective Constable Genier spoke to C-68's sister and mother, both of whom were previously aware of the allegations. He also met with school board officials Kevin Linden and Bernard Warner, the Superintendent, to discuss the file and obtain information. Detective Constable Genier maintained regular contact with Mr. Warner throughout the investigation.

On January 6, 1997, Detective Constable Genier contacted Mr. Warner and told him that Mr. Lalonde would be arrested the following morning. Mr. Warner stated that upon the laying of criminal charges, Mr. Lalonde would be suspended by the school board. The following day, Detective Constables Genier and Chris McDonnell arrested Mr. Lalonde and laid charges with respect to C-68. Mr. Lalonde was released on bail after a hearing that day.

Detective Constable Don Genier Discovers Other Alleged Victims of Marcel Lalonde

During his investigation of C-68's complaint and after Mr. Lalonde's arrest, Detective Constable Genier obtained information about other possible victims of Mr. Lalonde.

One of these alleged victims was David Silmsier. It appears that Detective Constable Genier was aware that Mr. Silmsier, an alleged victim of Father Charles MacDonald, had previously made allegations against Mr. Lalonde. In his testimony at Mr. Lalonde's preliminary inquiry, Detective Constable Genier stated, "I was familiar with the 1994 case with David Silmsier, and I had recalled a mention of Marcel Lalonde in that transcript."

Detective Constable Genier put a great deal of effort into attempting to locate Mr. Silmsier to discuss his allegations. On January 23, 1997, Detective Constable Genier received a call from Detective Constable Michael Fagan, who was working

on the Father MacDonald case. David Silmser's wife, Pamela, had advised Detective Constable Fagan that her husband did not want to talk about the abuse committed by Mr. Lalonde until the court proceedings with Father MacDonald were completed. According to Detective Constable Genier's notes, Detective Constable Fagan asked her to have Mr. Silmser call the Lancaster Detachment when he was ready.

Detective Constable Genier also reviewed the 1994 Crown brief on the re-investigation of Father MacDonald and made efforts to contact the witnesses named therein to ask if they had any association with Mr. Lalonde.

He obtained important leads through this process. For example, Albert Lalonde, whom Detective Constable Genier apparently contacted because of his association with the Father MacDonald investigation, told Detective Constable Genier that when he mentioned the investigation to his brother, his brother guessed it was about Marcel Lalonde. By following up with Albert Lalonde's brother, Detective Constable Genier obtained the names of further possible victims. These names were referred to the CPS, as discussed below.

Detective Constable Genier learned of another possible victim of Marcel Lalonde, C-8, who was under investigation for sexually assaulting a teenage girl. On December 18, 1996, Detective Constable Genier spoke to C-8 as a suspect in this investigation. C-8 told Detective Constable Genier that he had been abused by Father MacDonald and Mr. Lalonde. The following day, Detective Constable Genier arrested and charged C-8 with the sexual assault of the teen. On January 3, 1997, Detective Constable Genier contacted C-8 and asked if he would "lay his complaint of being sexually assaulted by Lalonde." According to Detective Constable Genier's notes, C-8 said that his lawyer was away and he would be in touch when he returned.

On January 23, 1997, Detective Constable Genier met with C-8 and his lawyer, Charles Bourgeois, at the OPP's Lancaster Detachment. Detective Constable Genier conducted two videotaped interviews: one in relation to C-8's allegations against Father MacDonald and the other in relation to his allegations against Mr. Lalonde. During each interview, C-8 read a prepared statement. At the conclusion of the interviews, C-8 provided names of other possible victims of Mr. Lalonde, including C-66. Constable Perry Dunlop had assisted C-8 in the preparation of his statements. At the time of the interviews, Detective Constable Genier was not aware of Constable Dunlop's involvement.

OPP Refers Further Marcel Lalonde Complaints to CPS

The OPP laid charges against Marcel Lalonde only in relation to the allegations made by C-68. All of the other victims and potential victims uncovered by Detective Constable Genier were referred to the CPS. It appears that the referrals

were made on the basis that the alleged offences in those cases took place in CPS jurisdiction. CPS Constable René Desrosiers was assigned to that investigation, which is described in detail in Chapter 6.

One individual was referred to CPS on January 21, 1997. This alleged victim had told Detective Constable Genier that Mr. Lalonde had taken photographs of him and had other photographs of boys in his possession.

On January 27, Detective Constable Genier received a call from C-45, who claimed to have been sexually assaulted by Mr. Lalonde. This complainant was also referred to the CPS.

On January 28, Detective Constable Genier met with Staff Sergeant Luc Brunet of the CPS, provided him with names of further victims, and advised that a press release might encourage other victims to come forward. Detective Constable Genier also told Staff Sergeant Brunet that two of the alleged victims had mentioned that Mr. Lalonde had a photo album containing pictures of many boys; that C-45 alleged that he had been assaulted by Ken Seguin and Nelson Barque at the Cornwall Probation Office in 1971; and that C-8 had given two separate interviews to Detective Constable Genier in relation to allegations made against Father MacDonald and Mr. Lalonde. The videotaped statements of C-8 were given to the CPS on March 13, 1997.

OPP Involvement in CPS Arrest of Marcel Lalonde and Search of His Residence

On April 29, 1997, the CPS laid charges against Mr. Lalonde in relation to the complaints made by C-8, C-45, C-66, and a number of other individuals. That day, the CPS executed a search warrant of Mr. Lalonde's home. They seized five photo albums which contained Polaroid pictures of teenagers drinking alcohol in Mr. Lalonde's home. The teenagers were clothed. They also found five nude photographs.

Crown Murray MacDonald advised Detective Constable Genier of the arrest that same day.

On May 22, Detective Inspector Smith and Detective Constable Steve Seguin attended the CPS and looked through photo albums seized from Mr. Lalonde's residence. On December 5, 1997, Constable Desrosiers turned over to Detective Constable Genier, in his capacity as a Project Truth officer, a list of names of people identified in the photos.

The Decision Not to Include the Marcel Lalonde Case in Project Truth

On April 1, 1997, Detective Constable Genier met with Crown Attorney Guy Simard. Mr. Simard explained that the Marcel Lalonde case would be reassigned

because there was a conflict of interest in the Cornwall Crown Attorney's Office. The prosecution was eventually assigned to the Brockville Crown Attorney's Office.

Detective Inspector Smith asked Detective Constable Genier to attend a meeting at the regional Crown's office on April 24, 1997.

On April 24, Detective Constable Genier attended this meeting with Detective Inspector Smith, Detective Sergeant Pat Hall, Detective Constable Fagan, Peter Griffiths, Director of Crown Operations, Eastern Region, Crown Attorney Murray MacDonald, and Crown Attorney Robert Pelletier. The purpose of the meeting was to discuss a brief of materials that had been provided by Constable Dunlop's counsel, Charles Bourgeois, to Chief Julian Fantino, of the London Police Service. The "Fantino Brief" contained statements from alleged victims, including C-8 and David Silmser, alleging abuse by Mr. Lalonde. It was that the OPP would investigate all of the allegations in the Fantino Brief. This meeting is discussed in detail in the section "Project Truth: Initial Meetings Between OPP and Crowns."

Despite several references to Mr. Lalonde in the Fantino brief, the allegations against him did not become part of Project Truth. It is not clear whether the decision to exclude the Marcel Lalonde allegations was made at this meeting or some time later. Detective Constable Genier became a member of the Project Truth team and remained responsible for the OPP's investigation into Marcel Lalonde. It was expected that he would be able to deal with any overlapping issues that arose between the Marcel Lalonde case and the Project Truth investigation.

OPP and CPS Charges Against Marcel Lalonde Are Combined

Following the arrest of Mr. Lalonde by the CPS, Constable Desrosiers assumed responsibility for all of the CPS complainants while Detective Constable Genier remained responsible for the one OPP complainant, C-68. Sometime before the preliminary inquiry, a new information was sworn combining the counts contained in the information of January 1997 sworn by the OPP and the information of April 1997 sworn by the CPS.

Coordination of Disclosure

On August 18, 1997, Detective Constable Genier attended a meeting with Detective Inspector Smith and Crown Attorneys Curt Flanagan and Claudette Wilhelm to discuss disclosure issues relevant to the Marcel Lalonde and certain Project Truth investigations. Unfortunately, as I describe below, this meeting did not prevent disclosure problems from arising.

Significant coordination between CPS and the OPP was required for effective disclosure during the Marcel Lalonde prosecution. Constable Desrosiers testified that he and Detective Constable Genier would each look after the disclosure from their own police services. Neither had the opportunity to review the documents the other was disclosing. Faxes of disclosure requests from the Crown's office were sent to both officers. They would then contact each other to determine who would respond to each request. Sometimes they delivered disclosure packages to the Crown on the other's behalf. However, Constable Desrosiers testified that, even then, he was not privy to what was being disclosed by Detective Constable Genier, other than seeing the request to which he was responding.

Detective Inspector Hall, on the other hand, testified that Detective Constable Genier and Constable Desrosiers dealt with disclosure requests jointly. Detective Inspector Hall's evidence suggested that both officers were fully informed as to the other's disclosures. In this regard, I prefer the evidence of Constable Desrosiers. Detective Inspector Hall was not Detective Constable Genier's supervisor in regard to the Marcel Lalonde investigation since Detective Constable Genier was acting in his capacity as a local detachment officer. Constable Desrosiers, on the other hand, was directly involved and was quite clear in his evidence as to the procedure the officers followed.

Disclosure Issues Arising During the Preliminary Inquiry

Mr. Lalonde's preliminary inquiry commenced on January 13, 1998. Constable Perry Dunlop was called by defence counsel to give evidence. It became evident during Constable Dunlop's testimony that he had not disclosed all documents in his possession relevant to the Marcel Lalonde prosecution.

Constable Dunlop stated in his testimony that he had seen Detective Constable Genier at the Court and thought "he would have everything [Perry Dunlop] provided to the OPP." In other words, Constable Dunlop appeared to be saying that Detective Constable Genier had all of the notes that he had given to the OPP.

On April 29, 1998, Crown Claudette Wilhelm asked Detective Constable Genier for "all notes from Constable Dunlop [to] be disclosed pertaining to Lalonde investigation." Detective Constable Genier's notes state that he did not find any notes pertaining to Constable Perry Dunlop's interview with C-8. He then spoke to Detective Sergeant Hall about the Crown's request. Detective Sergeant Hall advised that he had spoken to Constable Dunlop in October of 1997 and all notes pertaining to the Marcel Lalonde investigation were supposedly in the material received from Constable Dunlop.

Detective Constable Genier prepared a memo to Detective Sergeant Hall requesting him to contact Constable Dunlop to ascertain if he had any other information regarding Mr. Lalonde. Detective Sergeant Hall contacted Constable

Dunlop, read to him the notes that the OPP had in its possession relating to Mr. Lalonde, and asked if Constable Dunlop had anything further in his possession. Detective Sergeant Hall pointed out that Constable Dunlop had indicated in his evidence at the preliminary inquiry that the OPP were in possession of all his notes but that very little was provided. Constable Dunlop advised that he would check his notes again and advise if he had any further information.

As I will explain below, Project Truth was in fact already in possession of relevant notes from Constable Dunlop that had not been disclosed to the Crown. However, Constable Dunlop also had notes in his possession that he had not disclosed to the OPP. It appears that no one realized this until just before the Lalonde trial was about to begin in the fall of 1999.

Constable Desrosiers testified that he was not aware that Constable Dunlop had provided any disclosure to Project Truth until he saw Detective Constable Genier's memorandum to Detective Sergeant Hall. In particular, he was not aware that Constable Dunlop had provided a yellow binder in October 1997, which contained notes relevant to Mr. Lalonde.

In joint investigations involving more than one police force, I would recommend that one officer be responsible for *all* disclosure requests. This officer should have a contact on the other force or forces who assist with disclosure, but one person should oversee and track which items have been disclosed to the Crown on behalf of all police forces involved in the investigation.

Disclosure Issues Around the First Trial Date

Mr. Lalonde was committed to trial following the preliminary inquiry, and a trial date was set for October 4, 1999. On September 29, 1999, defence counsel wrote to the Crown requesting notes taken by Constable Dunlop on September 11, 1996, and on December 12, 1996.

These notes were in the package of materials that Constable Dunlop had delivered to Project Truth in a yellow binder in October 1997. The disclosure of notes in Constable Dunlop's possession is described in detail in the section entitled "Interactions Between Project Truth and Constable Perry Dunlop." Both notes related to contact Constable Dunlop had with C-8; however, neither made any reference to Mr. Lalonde. Detective Inspector Hall testified that he did not believe there was anything in the yellow binders that was relevant for disclosure in the Marcel Lalonde prosecution.

In my view, any notes obtained by Project Truth that showed contact between Constable Dunlop and any of the complainants in the Marcel Lalonde prosecution ought to have been disclosed to the Crown upon receipt. Moreover, after Constable Dunlop's contact with C-8 was raised at the preliminary inquiry, it became quite clear that the Crown was interested in obtaining any notes that

Constable Dunlop had made in this regard. Accordingly, it ought to have been apparent to the OPP that notes in its possession indicating such contact, whether or not they referred to Mr. Lalonde specifically, should have been disclosed to the Crown.

On October 1, 1999, Detective Constable Genier met with the Crown and was provided with notes that Constable Dunlop had given Constable Desrosiers the day before. In addition to the notes of September 11 and December 12, 1996, Constable Dunlop had disclosed another note dated November 19, 1996, that referred to a conversation between him and C-8 about Mr. Lalonde. Detective Constable Genier checked the Project Truth files and found a similar typed version of these handwritten notes. Detective Constable Genier's notes indicate he would disclose the material to defence counsel.

On the morning of October 4, 1999, the date scheduled for the start of the Marcel Lalonde trial, Crown Wilhelm requested more of the materials from Constable Dunlop that were in Project Truth's possession. Detective Constable Genier obtained two black binders that had been disclosed by Constable Dunlop to the OPP in July 1998 and reviewed them with Crown Wilhelm. Crown and defence counsel then went in chambers. Detective Constable Genier noted: "Matter will be adjourned because of victims being involved in other matters which defence claims sections pertain to accused—Lalonde." The trial was adjourned to September 11, 2000.

I note that if the matter had not been adjourned due to the late disclosure of the notes from Constable Dunlop, it would have had to have been adjourned for another reason. As I have discussed in detail in Chapter 6, on October 5, 1999, Constable Desrosiers learned of the 1989 investigation conducted by the CPS into allegations against Mr. Lalonde. This material had not yet been disclosed to the defence.

In the days following the adjournment of the trial, Crown Wilhelm met with Detective Constable Genier and Detective Sergeant Hall regarding the relevant materials in the possession of Project Truth and went to the Project Truth offices to review those materials. As a result, it appears from Detective Constable Genier's notes, further documents were identified and a package was sent to defence counsel including "all statements pertaining to Marcel Lalonde and Perry Dunlop." Detective Inspector Hall testified that he recalled Crown Wilhelm coming to the OPP offices and preparing a list of documents that she wanted for disclosure.

There is nothing before me to indicate what specifically was identified by Crown Wilhelm from the Project Truth files as relevant to the Marcel Lalonde prosecution. However, there were many areas of intersection between Project Truth and the Lalonde investigation that may have posed complications regarding disclosure.

For example, as mentioned above, on the day of Mr. Lalonde's arrest by the CPS, his residence was searched and a number of photographs were seized. One of these photographs was of Father MacDonald with two young people at the rectory. One of the young people was identified by Project Truth as C-107, whom Detective Inspector Smith and Detective Sergeant Hall interviewed in December 1997.

Although this individual had no issues with Father MacDonald, he gave the officers information concerning possible abuse by Mr. Lalonde. Following the interview, C-107 mailed a statement to Detective Sergeant Hall disclosing abuse by Mr. Lalonde but indicating that he did not want to pursue criminal charges.

Given the overlap between the Marcel Lalonde investigation and Project Truth, in particular the joint victims and Constable Dunlop's involvement with some of those victims, it is not surprising that Project Truth came into possession of information that was relevant to the Marcel Lalonde prosecution. It is clear that information was not effectively and efficiently shared. In my view the OPP failed to develop and apply proper practices or protocols to ensure effective cooperation with the Cornwall Police Service and local OPP detachments, including disclosure procedures in relation to issues arising from the involvement of Constable Dunlop in Project Truth investigations.

Crown Claudette Wilhelm's Request for Assistance From the OPP

Detective Inspector Hall received a letter from Assistant Crown Attorney Wilhelm dated October 5, 1999, requesting that the OPP again attempt to obtain full disclosure from Constable Perry Dunlop. Crown Wilhelm also asked Detective Inspector Hall to speak with Constable Dunlop and ask him not to contact any of the complainants in the Marcel Lalonde case.

As I discuss in detail in the section "Interactions Between Project Truth and Constable Perry Dunlop," Detective Inspector Hall discussed Crown Wilhelm's letter and request with a number of people, including his superior officers, Detective Superintendent Larry Edgar and Detective Inspector Klancy Grasman, CPS Staff Sergeant Garry Derochie and Acting Inspector Rick Carter, and Marc Garson, Director of Crown Operations, Western Region. The discussions revolved around what they could do to obtain any additional materials in Constable Dunlop's possession and whether Constable Dunlop should be investigated for obstruction of justice. Detective Inspector Hall was advised by his superiors that he should not interview Constable Dunlop.

On October 28, 1999, Detective Inspector Hall replied to Ms Wilhelm's letter and informed her that he could not comply with her request to speak with Constable Dunlop. Detective Inspector Hall wrote that it "would not be prudent" for him to become involved with Constable Dunlop on matters not subject to the Project Truth investigation. Detective Inspector Hall also wrote:

While dealing with Project Truth matters, and as a Detective Sergeant, I had contact with Constable Perry Dunlop on numerous occasions regarding his disclosure in our matters. He has assured Project Truth officers that he has provided all disclosure relating to our investigation. *I have no reason to believe otherwise at this time.* (Emphasis added)

This comment from Detective Inspector Hall is in stark contrast to the information available at that time. In the fall of 1998 Constable Dunlop had refused to sign a memo confirming that he had made full disclosure. Nothing had occurred since that time that would demonstrate that full disclosure had been made. Quite to the contrary, the disclosure of the November 19, 1996, note demonstrated that Constable Dunlop had items in his possession that he had not given to the OPP. In addition, this statement is inconsistent with the discussions that Detective Inspector Hall was having with Staff Sergeant Derochie and Acting Inspector Carter around this time about investigating Constable Dunlop for obstruction of justice or obtaining a search warrant for his residence.

As discussed in Chapter 11, on November 19, 1999, Marc Garson issued an opinion following his meeting with Staff Sergeant Derochie. This opinion led to the preparation of a comprehensive order by the CPS to Constable Perry Dunlop in consultation with Assistant Crown Attorney Wilhelm. The order required Constable Dunlop to disclose all notes that he had related to the Marcel Lalonde case. Detective Constable Genier and Constable Desrosiers conducted a thorough review of the materials subsequently produced by Constable Dunlop to “avoid any further adjournment” in the Marcel Lalonde matter “due to undisclosed material on the part of Perry Dunlop.”

Marcel Lalonde’s Conviction

Marcel Lalonde’s trial was held in September 2000, and he was convicted on November 17, 2000, on charges relating to four of the complainants: C-45, C-8, C-66, and another individual. He was acquitted of charges in relation to the remaining complainants, including C-68. On May 3, 2001, Mr. Lalonde was sentenced to a period of incarceration of two years less a day.

Events Leading up to Project Truth

Constable Perry Dunlop’s Lawsuit and Private Investigation

As mentioned in Chapter 6, on the institutional response of the Cornwall Community Police Service, in June 1996, CPS Constable Perry Dunlop launched a lawsuit against the Cornwall Police Service, the Diocese of Alexandria-Cornwall,

and a number of others, claiming over \$40 million in damages. The lawsuit focused primarily on the events surrounding the illegal settlement with David Silmser and the subsequent *Police Services Act* charges that were brought against Constable Dunlop for disclosing Mr. Silmser's statement to the Children's Aid Society. The action alleged malicious prosecution, negligence, abuse of process, and defamation. It also alleged that the CPS's treatment of Constable Dunlop "was part of a greater conspiracy to keep a lid on allegations of sexual abuse involving prominent individuals in Cornwall which included Father Charles MacDonald and the late Ken Seguin."

Shortly after the statement of claim was issued in this lawsuit, Constable Dunlop's lawyer, Charles Bourgeois, sent a letter to then Ontario Provincial Police Commissioner Thomas O'Grady, requesting full disclosure of all documents from the investigations into "Father MacDonald, Ken Seguin, Angus Malcolm MacDonald, and the Cornwall Police Service" on the basis that these files contained information relevant to Constable Dunlop's civil suit.

Commissioner O'Grady forwarded the letter to Detective Inspector Tim Smith and asked him to respond. Detective Inspector Smith testified that he had never had a request from a civil lawyer like this before. He contacted Robert Pelletier, the Crown responsible for the Father MacDonald prosecution, who advised that it would be inappropriate for Detective Inspector Smith to provide the materials to Mr. Bourgeois while the criminal process was ongoing.

Detective Inspector Smith responded to Mr. Bourgeois by letter dated August 19, 1996, stating that he would not be provided with anything from the police files. Detective Inspector Smith did not believe that he heard from Mr. Bourgeois after that. Although Mr. Bourgeois may not have been pleased with it, I believe this was the most appropriate response to his request.

Beginning around June 1996 and continuing into spring 1997, Constable Dunlop, who was off work on sick leave, along with his wife, brother-in-law, and lawyer, began speaking to witnesses and alleged victims about allegations of sexual abuse in the Cornwall area. They compiled a number of witness statements and affidavits, some of which were used to support Constable Dunlop's civil action. This private investigation is described in detail in Chapter 6.

Constable Dunlop's statement of claim was amended on November 15, 1996. The most notable change was that the lawsuit now claimed that there was a "clan" of pedophiles from the Cornwall area who had sexually abused minors since 1957. Members of this group were alleged to have met at Stanley Island in late August or early September 1993 and conspired to cover up the criminal allegations against Father MacDonald and Mr. Seguin. Another amendment to the lawsuit alleged that the defendants "and other conspiring parties used their positions of supreme trust and authority to facilitate suppress and condone

unlawful, illegal, immoral and perverse acts rather than consider the safety of children in the community.” Further, the amended statement of claim alleged that Father MacDonald, Malcolm MacDonald, and Mr. Seguin had conspired to injure Constable Dunlop and his immediate family.

Involvement of Chief Julian Fantino

On December 16, 1996, Charles Bourgeois contacted London Chief of Police Julian Fantino (now Commissioner of the Ontario Provincial Police). Chief Fantino was known for his force’s work on a high-profile investigation into the sexual exploitation of boys called Project Guardian.

Mr. Bourgeois asked Chief Fantino to investigate the allegations of child sexual abuse that had been identified by Constable Dunlop. He wanted Chief Fantino to review an assortment of materials and provide feedback. Commissioner Fantino testified that at the time he had heard of Constable Dunlop through the media.

Commissioner Fantino testified that he felt it would be “totally inappropriate” to involve himself in this matter. He stated that he had no jurisdiction, no time to deal with it, and enough of his own work to do. Moreover, Commissioner Fantino testified that he told Mr. Bourgeois he did not wish to receive any material, would not provide feedback on it, and would not conduct an investigation of any kind. He told the Inquiry that he suggested that Mr. Bourgeois send the material to the CPS or to the Ontario Provincial Police’s Project P. However, Mr. Bourgeois wanted these documents to be reviewed by a third party. This was, in part, because of Constable Dunlop’s lack of trust in the local authorities. Mr. Bourgeois had no specific recollection of the conversation but confirmed in his testimony that Chief Fantino referred him to Project P.

On December 19, 1996, Chief Fantino received a package from Mr. Bourgeois consisting of a binder with seventy-four tabs, a videotape, and some audiotapes. The binder contained statements and affidavits from a number of alleged victims and witnesses, pictures of and background information on various priests and other alleged perpetrators, the amended statement of claim for Constable Dunlop’s civil action against the CPS and others, assorted media articles, the charge sheet of the *Police Services Act* charges against Constable Dunlop, as well as related judicial decisions, and an excerpt from the book *Boys Don’t Cry*. These materials became known as the “Fantino Brief.”

In the accompanying covering letter, Mr. Bourgeois wrote, “[M]y clients and I sincerely appreciate the considerable time, effort and commitment you will be affording this case,” and, “After so many failed attempts, they feel you are the man for the job.” The letter went on to say, “We would greatly appreciate your opinions and direction concerning this matter and await your reply on Monday, January 6, 1997.”

Commissioner Fantino conceded that the wording of the covering letter suggests that he had agreed to review the materials but said that was “totally contrary” to what he had told Mr. Bourgeois several days before. Commissioner Fantino testified that Mr. Bourgeois was dismissive of all that he had said and was intent on sending him the material “no matter what.” My view is that Mr. Bourgeois and the Dunlops were desperate to have this matter dealt with by someone in authority.

Commissioner Fantino believed that he first saw the letter and materials in January 1997. After “perusing” the material to determine what should be done with it, Chief Fantino was “more convinced than ever that the material was not anything that [he] needed or should have had in [his] possession” and that the material should be turned over to the Ontario Provincial Police (OPP). He met with Detective Chief Superintendent Wayne Frechette, then head of the OPP’s Criminal Investigation Bureau, in early February 1997 and gave the material to him. Chief Fantino considered this to be the end of his role in the matter. He did not contact Mr. Bourgeois or the Dunlops to acknowledge receipt of the materials or to tell them that he had forwarded them to the OPP. Chief Fantino thought Mr. Bourgeois had been discourteous in sending him the materials and testified that he felt that he was “being used.”

I commend Commissioner Fantino for taking the initiative to ensure that the materials were forwarded to the proper authorities. However, I find it unfortunate that he did not inform Mr. Bourgeois of what he did with the materials, which might have reduced Constable Dunlop’s sense of frustration in convincing someone to look into these allegations.

After a discussion among senior officers at the OPP Headquarters in Orillia, a decision was made to give the Fantino Brief to Detective Inspector Tim Smith. He received it on or around February 18, 1997. Detective Inspector Smith thought that he was chosen to look over the brief because he had been involved in the 1994 investigations in Cornwall and, at the time, no one else had comparable experience in the investigation of historical child sexual abuse. Though Detective Inspector Smith had recent experience investigating historical sexual assaults in the St. Joseph’s and St. John’s Training School cases, he did not have any experience in investigating historical sexual assaults outside an institutional setting, aside from his 1994 investigation into allegations against Father Charles MacDonald.

Detective Inspector Smith received his instructions in a telephone call from Detective Chief Superintendent Frechette. He was not given any specific directions, but rather was told to “take care of it.” Detective Inspector Smith informed Detective Chief Superintendent Frechette that he was planning to retire soon and that he would only be able to work on the matter for a year.

After he received the brief, Detective Inspector Smith contacted Chief Fantino, whom he knew personally. Chief Fantino expressed his view that the way he

had received the materials was improper but told Detective Inspector Smith that the brief appeared to be well prepared and that it contained a number of allegations that required investigation. Chief Fantino also gave Detective Inspector Smith some advice based on his experience in Project Guardian, particularly in relation to victim services.

Detective Inspector Smith testified that after he reviewed the brief, he knew that it was going to require a large-scale investigation. In addition, around the same time that the Fantino Brief was being referred to and reviewed by Detective Inspector Smith, other information related to the brief was coming to light, including information contained in the videotaped statements of Ron Leroux and C-8 and further documentation relating to Constable Dunlop's action against the CPS. According to Detective Inspector Smith, "documentation was floating all over the place ... at this period of time."

Ron Leroux's Complaint to the OPP in Orillia

In the same month that the OPP received the Fantino Brief, Ron Leroux gave a statement to two OPP officers in Orillia outlining allegations similar to those contained in the brief.

On February 7, 1997, Mr. Leroux arrived at the OPP Headquarters in Orillia with Mr. Bourgeois to give a statement. According to Mr. Bourgeois, this had been arranged pursuant to Chief Fantino's suggestion to him that they report the allegations in the Fantino Brief to the OPP's Project P. Mr. Leroux and Mr. Bourgeois met with Detective Constables Dan Anthony and Catherine Bell, and Mr. Leroux gave two videotaped statements, the first lasting several hours.

During the first videotaped statement, Mr. Leroux read aloud from two documents that had been included in the Fantino Brief: his statement to Constable Dunlop on December 4, 1996, and his affidavit dated November 13, 1996. In addition to reading these statements, Mr. Leroux expanded on certain points throughout. Detective Constables Anthony and Bell also asked a number of follow-up questions about issues raised in the statements.

In the course of the first interview, Mr. Leroux made a number of allegations about instances of sexual abuse that he had experienced or witnessed, and, further, made allegations about a "clan" of pedophiles operating in or around the Cornwall area.

In particular, Mr. Leroux claimed to have witnessed the abuse of several boys at a religious retreat at Cameron's Point where sheets were put over the boys' heads and candles placed in their rectums. Mr. Leroux also claimed that several priests had abused him. He made a number of allegations about Malcolm MacDonald, who he said abused children in his law office. Mr. Leroux claimed that some of the children, after being abused by their lawyer, would "go upstairs

to probation office and get it again.” He also referred to videotapes seized from his home by the OPP in 1993 (see “Videotapes Found in Ron Leroux’s House by the OPP” earlier in this chapter). He claimed the tapes belonged to Ken Seguin, that they contained homemade child pornography, and that the majority of it was made by Mr. Seguin.

In the course of the interview, Mr. Leroux described a “clan” of pedophiles in Cornwall. He said he saw “clan” members with adolescent male prostitutes during trips to Fort Lauderdale, Florida. The “clan” also met at the parish house in St. Andrews and at Malcolm MacDonald’s cottage on Stanley Island near Summerstown, Ontario. Mr. Leroux said boys were brought to the cottage and molested by various members of the group.

Mr. Leroux claimed that the members of the “clan” were well-connected, and he insinuated they were able to avoid criminal prosecution. He described the group having a “VIP meeting” at Malcolm MacDonald’s cottage in late August or early September 1993, after which Mr. Seguin had told Mr. Leroux the allegations against Mr. Seguin were settled.

Mr. Leroux also claimed the clan was “prepared to take human lives to continue the cover up for sexual improprieties” and mentioned, in particular, that Mr. Seguin, Malcolm MacDonald, and Father Charles Macdonald had threatened to kill Constable Dunlop and his family. However, Mr. Leroux told the officers later in the interview that he did not think the men were capable of carrying out the threat and that they were just “ranting and raving.”

The Project Truth investigation eventually revealed that few of Mr. Leroux’s claims were well founded and most others were greatly exaggerated or simply untrue. Many elements of Mr. Leroux’s statement became the basis for rumours and gossip within the media and the Cornwall community. It is significant to note, therefore, that at this Inquiry, Mr. Leroux testified that a number of things he said in his various statements were false. In particular, Mr. Leroux testified that he had not witnessed a ritual at the Cameron’s Point retreat involving sheets and candles. He further admitted that he did not even know some of the people he had identified as belonging to the “clan” of pedophiles.

Mr. Leroux testified that Constable Dunlop and Mr. Bourgeois told him to leave the names in the statement because someone else would know them. Mr. Bourgeois, on the other hand, testified that he did not know on February 7, 1997, that parts of Mr. Leroux’s affidavit were false, and he denied telling Mr. Leroux to leave in the names of individuals he could not identify.

However, a few of Mr. Leroux’s claims were consistent with statements made by others and with evidence uncovered by Project Truth. For example, a number of complainants came forward and alleged that they had been abused by Malcolm MacDonald, and he was arrested by Project Truth based on some of these allegations. Numerous individuals also told Project Truth that they were abused by

probation officer Ken Seguin. In addition, Project Truth learned that tapes containing some form of pornography were seized from Mr. Leroux's home in 1993 and were then destroyed by the OPP.

I believe that Mr. Bourgeois and Constable Dunlop did not intentionally influence Mr. Leroux. However, Mr. Leroux was a highly suggestible individual, and because of the use of leading questions in Constable Dunlop's interviews with him, he adopted certain ideas that were put to him as his own.

The allegations made by Mr. Leroux were not immediately investigated by the OPP. Helen Dunlop later told Detective Sergeant Pat Hall and Constable Steve Seguin that she was told that the investigations were being forwarded to the OPP's Major Cases Unit.

Assignment of Detective Sergeant Pat Hall to the Death Threat Investigation

On March 14, 1997, Constable Dunlop contacted Detective Constable Anthony in Orillia and asked for a formal investigation into the death threats that had allegedly been made against him and his family.

A few days later, on March 18, 1997, Helen Dunlop contacted Constable Seguin at the OPP's Long Sault Detachment to inquire about the status of the death threats investigation. Constable Seguin then contacted Orillia and was informed that Detective Inspector Smith was the contact on the file.

The following day, Detective Inspector Smith spoke to Detective Inspector Klancy Grasman at the Criminal Investigation Bureau, who asked him what was being done about the death threats. Detective Inspector Smith told Detective Inspector Grasman that he had been away, but said that he would look into the matter. It is apparent from Detective Inspector Smith's notes that he was previously aware of the allegations of death threats made by Mr. Leroux to the Orillia officers. Detective Inspector Smith later told Detective Sergeant Pat Hall that he was concerned that the Dunlops would file a complaint against the OPP for not acting sooner. Detective Inspector Smith called Helen Dunlop and advised her that he would be supervising the investigation, which was to be conducted by other officers.

Detective Inspector Smith then contacted Chief Superintendent R.J. Eamer and asked that Detective Sergeant Hall be assigned to investigate the complaint, with the assistance of Constable Seguin. Detective Sergeant Hall then worked out of the Criminal Investigation Unit of #10 District Headquarters. Detective Inspector Smith testified that he requested Detective Sergeant Hall because he hoped to involve him in the investigation of the other issues raised in the Fantino Brief. Detective Inspector Smith knew that he would not be able to investigate the Fantino Brief on a full-time basis and he wanted to bring in an experienced

investigator. Detective Sergeant Hall, who initially hoped to retire at the end of July 1997, was unaware of Detective Inspector Smith's broader plans.

Detective Inspector Smith called Detective Sergeant Hall that day, March 19, 1997, and briefly explained the death threats complaint to him. The investigation of the death threats is described in a later section of this chapter.

Project Truth: Initial Meetings Between OPP and Crowns

After Detective Inspector Tim Smith reviewed the Fantino Brief, he contacted Crown Robert Pelletier on March 18, 1997, and set up a meeting for March 20. At the meeting, Detective Inspector Smith provided Mr. Pelletier with the brief and they discussed whether any of the materials in it needed to be disclosed to the defence in the Father Charles MacDonald prosecution. They decided that Mr. Pelletier would review the brief and set up a meeting with the Ontario Provincial Police (OPP) and Peter Griffiths, Director of Crown Operations, Eastern Region.

This meeting was scheduled for April 24, 1997. Detective Inspector Smith invited Detective Sergeant Pat Hall and Detective Constables Don Genier and Michael Fagan to attend. Detective Sergeant Hall had the Fantino Brief at this time but was not aware of all the allegations in it. He testified that he had very little to say at the meeting.

In addition to Mr. Griffiths and Mr. Pelletier, local Crown Attorney Murray MacDonald was also present. My views on Crown MacDonald's presence at the meeting are discussed in Chapter 11, dealing with the institutional response of the Ministry of the Attorney General.

It was decided at this meeting that the OPP would investigate all of the allegations in the Fantino Brief. Mr. Griffiths agreed to write a letter to the OPP formally requesting an investigation.

Before the meeting, Detective Inspector Smith determined that the investigation should take the form of a special project. Although Detective Inspector Smith testified that he did not really want to take this on because he had just finished a major investigation, he also said that "there was nobody else really at the time ... that ... had the qualifications I had to do this." The other participants agreed that he should lead the investigation with a team of officers working under his direction.

Peter Griffiths testified that he did not have any reservations about asking Detective Inspector Smith to take on the case, notwithstanding the fact that the officer would be required to revisit his previous investigation into the conspiracy allegations (discussed earlier in this chapter). Citing the arrest of Father MacDonald in 1996, Mr. Griffiths noted that Detective Inspector Smith had

demonstrated that he was capable of changing his opinion and laying charges when new information was uncovered.

Unfortunately, there was no discussion at the meeting about how to properly frame the mandate of this special project. Both Mr. Griffiths and Mr. Pelletier believed that some of the allegations relating to the “clan of pedophiles” were not well-founded. Yet there was no discussion about whether all the allegations should be investigated. Mr. Griffiths testified that although certain allegations “didn’t have a ring of truth about them ... stranger things have happened in the world and that’s why I asked that the entire brief be investigated.”

I do not criticize the decision at the April 24 meeting to take all of the allegations contained in the Fantino Brief seriously. I do question the OPP’s apparent failure to determine for itself the most appropriate way to investigate sexual abuse in the Cornwall area. It appears that the scope of the investigation was dictated by the information collected by Constable Perry Dunlop, rather than by a rational and well-thought-out strategy developed by the OPP. As I discuss in the section “Project Truth’s Mandate,” this led to the creation of a mandate that provided insufficient structure and focus for Project Truth.

My other criticism of this meeting relates to note taking. Although this was the founding meeting for a major investigation, none of the participants took minutes or detailed notes of what was decided. Detective Inspector Smith took some brief point-form notes of the key points:

Review allegations + invest to date.

Review Dunlop brief + allegations.

Decision—finish preliminary witnesses MacDonald + Silmsen.

Ask for an adj. [adjournment] prior to decision. Police investigate new allegations.

Disclose Dunlop brief to Neville.

Investigate all allegations.

Letter of request to be made to Supt. Larry Edgar by Peter Griffiths.

Detective Sergeant Hall’s notes are equally sparse. Given the magnitude and scope of the investigation contemplated, it would have been appropriate to have a note taker present and to write a report following the meeting.

It is clear to me that the participants at this meeting were not all aware of the enormity of the task they had undertaken. Detective Inspector Smith told Detective Sergeant Hall that the investigation would take from six months to one year. Detective Sergeant Hall had been planning to take advantage of a special option that would allow him to retire on July 31, 1997, but he withdrew his retirement request and agreed to take on the investigation, thinking that it would run until about April

1998, at which point he could retire at any time with two weeks notice. Mr. Griffiths testified that he had no idea that the investigation would last several years, involve hundreds of interviews, and compile over thirty Crown briefs.

Detective Wendy Leaver, an expert in the investigation of historical sexual offences, testified that she found many officers involved in these cases “had no idea” how a pedophile operates and would underestimate the number of victims involved. Historical sex abuse cases, she said, require specialized investigations that “demand resources and commitment and a long investigation.” Given their involvement in the Alfred investigations, which lasted seven years, Mr. Griffiths and Detective Inspector Smith should have known this, and I therefore find their expectations somewhat puzzling.

Quick action was not taken on all items discussed at the meeting. A month later, on May 27, 1997, after a follow-up call from Detective Inspector Smith, Mr. Griffiths prepared the agreed-upon letter to Detective Superintendent Larry Edgar of the OPP’s Criminal Investigation Bureau requesting “that Det. Insp. Smith be assigned to investigate the Dunlop/Bourgeois brief.”

Mr. Griffiths was appointed as a judge of the Ontario Court of Justice in May 1998. After writing this letter, his involvement in what was to become Project Truth was minimal.

Constable Perry Dunlop Delivers Government Brief to Ministries

On April 8, 1997, approximately two weeks before the April 24 meeting between the OPP officers and the Crowns, Constable Perry Dunlop attempted to deliver a set of four binders, a tape of the *Fifth Estate* episode featuring him, and a covering letter to three different institutions: the Ministry of the Attorney General, the Ministry of the Solicitor General, and the Ontario Civilian Commission on Police Services (OCCPS).

The binders contained the same documents as the Fantino Brief plus some additional materials, including three new statements from victims and materials disclosed during the *Police Services Act* charges against Constable Dunlop. The materials in these binders are referred to throughout this Report as the “Government Brief.”

The covering letter was seven pages long and set out numerous allegations of sexual abuse, as well as an allegation that the Cornwall Police Service (CPS) and others had conspired to obstruct justice. It also explained some of the history of the case.

Constable Dunlop first went to the Ministry of the Solicitor General and met with John Periversoff, Special Assistant, Policing Office of the Deputy Solicitor General. Mr. Periversoff accepted the letter from Constable Dunlop but declined to take the binders. He agreed to sign a receipt for the letter.

Constable Dunlop then went to OCCPS but was unable to meet with its chairperson, Murray Chitra. He left his entire package with a clerk-assistant, who signed a receipt for him.

Constable Dunlop's last stop was the Ministry of the Attorney General. Michael Austin, Records and Support Assistant, accepted the full package of materials and signed a receipt for them.

Only Solicitor General's Materials Passed on to the OPP

Unfortunately, only the Ministry of the Solicitor General passed the material it received on to the Ontario Provincial Police (OPP). Because the Ministry had accepted only Constable Dunlop's covering letter, the OPP did not receive the binders that Constable Dunlop had attempted to deliver with it. OCCPS held onto the material and did not transfer it to anyone. OCCPS first contacted the OPP about the materials in July 1998 when the issue was raised in the media. All that is known about the Government Brief that was delivered to the Ministry of the Attorney General is that the Ministry was later unable to locate it. This controversy is discussed in more detail later in this chapter in the section entitled "External Pressures: The Media, Websites and Garry Guzzo" and in Chapter 11, on the institutional response of the Ministry of the Attorney General.

Indications to OPP That Constable Dunlop Delivered Additional Materials

The OPP did not obtain a copy of the Government Brief until July 31, 1998, over a year after it had been delivered. However, in April 1997, it received several indications that Constable Dunlop had produced additional materials. Helen Dunlop told Detective Sergeant Pat Hall on April 4, 1997, that her husband was going to Toronto to deliver a package to the Solicitor General that week. Detective Sergeant Hall did not ask Ms Dunlop what these materials were or request a copy of them.

On April 14, 1997, Detective Inspector Smith also learned of the delivery of the binders. He received a call from Bart Caron of the Policing Services Division of the Ministry of the Solicitor General. Mr. Caron told him that Constable Dunlop had delivered a package and a letter to the Ministry of the Solicitor General, which had refused it and referred it to OCCPS. Mr. Caron told Detective Inspector Smith that he would provide him with a copy of Constable Dunlop's letter. Detective Inspector Smith failed to follow up with OCCPS in order to obtain the materials that were sent to it. Like Detective Sergeant Hall, Detective Inspector Smith should have mentioned the delivery of the binders at the April 24 meeting at which the Fantino Brief was discussed.

The OPP did receive the covering letter that was sent to the Solicitor General at or around the time of the April 24 meeting. The letter lists “four volumes of documents” as one of the enclosures. In the body of the letter, Constable Dunlop describes the documents that he received as disclosure through the *Police Services Act* hearing. The Fantino Brief consisted of only one binder and did not include the *Police Services Act* investigative materials. These discrepancies should have led the OPP to consider whether the materials delivered by Constable Dunlop on April 8 contained information not already in their possession.

Notwithstanding the above, Detective Inspector Smith and Detective Sergeant Hall became aware of the fact that Constable Dunlop had produced material in addition to the Fantino Brief only in July 1998. They received a copy of the Government Brief from Constable Dunlop on July 31, 1998. In a later section entitled “Interactions Between Project Truth and Constable Perry Dunlop,” I explain how the OPP became aware of these new materials and the effect of their delayed disclosure on the Project Truth investigation.

Constable Dunlop Is Told OPP Will Investigate All Allegations

On April 30, 1997, Detective Sergeant Hall left a voice mail message with the Dunlops, informing them that the brief sent to Chief Fantino had been forwarded to the OPP and that the OPP would be investigating all of the allegations. Since Constable Dunlop had not delivered his updated brief, containing three new statements from victims, to the OPP, it is unfortunate that he did not ensure that the investigators had received it. However, the responsibility for the delay must be attributed to the government agencies who accepted the materials but failed to forward them to the appropriate authority.

On May 1, 1997, Solicitor General Robert Runciman wrote to Constable Dunlop confirming that he had received Constable Dunlop’s letter and stating that it would be inappropriate for his Ministry to become involved in operational policing matters. He informed Constable Dunlop that his concerns were being investigated by the OPP and said, “If you have new information that may assist the investigators, I would strongly urge you to make your concerns known to the investigators, as these allegations properly fall within the jurisdiction of the OPP.” He suggested that Constable Dunlop should report the misconduct of police officers in accordance with the *Police Services Act*. Mr. Runciman enclosed a brochure entitled “How To File a Complaint Involving a Police Officer.”

Peter Griffiths, Director of Crown Operations, Eastern Region, also replied to Constable Dunlop’s letter to the Solicitor General on June 23, 1997. He informed Constable Dunlop that the materials that were given to Chief Fantino had been brought to the attention of the OPP, which was investigating the allegations of sexual assault.

Initial Plan and Initial Coordination Meetings for Project Truth

On May 14, 1997, Detective Inspector Tim Smith, Detective Sergeant Pat Hall, Detective Constable Steve Seguin, and Detective Constable Don Genier met with Detective Inspector Leo Sweeney to put together a plan for the investigation discussed at the April 24 meeting. Detective Inspector Smith and Detective Sergeant Hall decided to name the special project “Project Truth” because the purpose of the investigation was to discover the truth behind the allegations in Constable Perry Dunlop’s materials.

Recent Major Investigations Into Child Sexual Abuse In Eastern Ontario

In putting together the plan for Project Truth, the Ontario Provincial Police (OPP) had experience from two recent major investigations on historical child sexual abuse that it had conducted in the area to draw upon.

Project Jericho was a joint investigation between the OPP, the Prescott Police and child welfare investigations from Family and Children’s Services. It began as a result of allegations of sexual abuse in Prescott that were first disclosed in 1989. Early in the investigation, in March 1990, a Crown prosecutor was assigned to the case and was consulted on charges. Victim/Witness Assistance Program (VWAP) services were available from Janet Lee, who was seconded on a full-time basis to Project Jericho.

Project Jericho uncovered historical and ongoing abuse. The investigation led to a total of 275 victims (current and historical cases) and 119 alleged perpetrators (both male and female). Project Jericho was considered a success on many levels, and according to Dr. Peter Jaffe, it is an example of moving from a horrific tragedy to development of some hope and efforts at prevention.

The second recent major OPP investigation into historical sexual abuse was an investigation into allegations of abuse at the St. Joseph’s Training School in Alfred. St. Joseph’s was a school operated by Christian Brothers. The allegations surfaced when a reporter interviewing a number of individuals noticed that quite a few of them were alleging historical sexual abuse. The matter was brought to the attention of the OPP, and Detective Inspector Smith was assigned as the case manager in early 1990. The investigative team was solely composed of OPP officers. Cosette Chafe was seconded on a full-time basis to the Alfred investigations, where there were five VWAP positions set up before the preliminary inquiries began. Robert Pelletier was assigned to head a five-member prosecution team which included Murray MacDonald.³⁰

30. Four of the five Crowns were assigned to Alfred prosecutions full-time.

After approximately a year of investigation, there were dozens of suspects and several hundred complainants. The investigators provided the Crown with 8,000 pages of victim statements and requested recommendations on charges. The initial investigation, the subsequent investigation, the consultation, the laying of charges and the prosecution all flowed seamlessly, according to Mr. Pelletier. As a result of the investigation, twenty people were charged with regard to 165 complainants. The prosecutions took three years to complete.

The Operational Plan for Project Truth

Detective Inspector Smith had begun work on an operational plan in March 1997. He met with Detective Sergeant Hall again on June 5, 1997, to put together the plan that would be submitted to OPP Headquarters for approval. Both officers had experience in writing such plans. Detective Inspector Smith wrote the portion that set out the overview of the investigation, and Detective Sergeant Hall drafted the request for financial resources.

The operational plan gave an estimate of the size and scope of the investigation, the resources, including human resources, required for the investigation, and the manner in which it would be conducted.

The initial funding request for the project was for \$136,260. This budget included vehicle rental, travel throughout the province to interview victims and witnesses, accommodation and meals, office rental, the salary of a secretary, and the equipment and supplies required for the project. This budget did not include the officers' salaries, and it had been agreed that the officers assigned to the project would work eight-hour shifts and thus would receive little or no overtime pay for project work.

Although Detective Inspector Smith had initially convinced Detective Sergeant Hall to become involved on the understanding that the investigation was to take from six months to one year, the operational plan submitted to the Criminal Investigation Bureau stated, "It is anticipated that this project will require at least one year to complete." The plan warned that a shorter investigation would be detrimental to the ultimate success of subsequent prosecutions:

Experience in previous large scale sexual abuse investigations involving male victims has shown that it is difficult to accurately estimate the number of potential victims that may ultimately report abuse. Male victims of sexual abuse struggle with disclosing what may have occurred and do not readily come forward. In some cases it can take months if not years to report the abuse. Should an investigation be conducted with haste, charges laid and legal proceedings commenced,

experience has shown further victims will come forward causing extreme difficulties with disclosure and problems within the judicial process. Many times the results are piecemeal prosecutions which result in acquittals, stays of prosecution or the withdrawal of charges.

According to Detective Inspector Hall, Detective Inspector Smith wrote this section based on his experience with the St. Joseph's Training School investigations and prosecutions. Detective Inspector Hall believed that Detective Inspector Smith was referring to the fact that victims are often reluctant to be the first to come forward, but that once one person comes forward, other victims typically make allegations.

The plan noted that at least eighteen suspected pedophiles would be under investigation. It also stated:

Many studies into the abuse of paedophiles, indicates this type of sexual behaviour is not perpetrated in random isolated incidents, but is a continuing and constant course of action involving multiple victims over a period of many years.

The authors of the plan appear to have had a good sense of the problems that could arise in a multi-victim, multi-offender investigation in terms of the large numbers of victims who may come forward. However, they vastly underestimated the time that would be required to complete the investigation and the resources, both financial and human, that would be needed. Experienced officers like Detective Inspector Smith and Detective Sergeant Hall should have known that one year was not sufficient for this type of project.

Some of the officers assigned to Project Truth testified that they often worked more than a regular workday. Detective Constable Seguin said, "[T]his is one of those all-consuming investigations ... it kind of takes over your life." Detective Inspector Hall said that he was forced to limit overtime even though there was enough work to have the officers working twelve hours a day or on weekends.

Detective Inspector Smith emphasized the dedication of the officers who joined Project Truth, explaining that they missed overtime pay that they would have received if they stayed at their local detachments. It seems to me that limits on overtime pay placed an arbitrary cap on the investigation. Once they became aware of the enlarged scope of the investigation, Detective Inspector Smith and Detective Sergeant Hall should have had some discretion in determining when overtime was necessary, and the OPP should have made additional resources available if and when they were requested.

Understaffing an investigation like Project Truth does a disservice to potential victims and to the police officers involved. Dr. Peter Jaffe testified before me

that officers and other professionals exposed to sexual assault cases can experience a type of “vicarious trauma”:

... I think it's one of the things that shuts down investigations. People don't want to talk about it. People don't want to deal with it. It's very painful and I've been involved with many police officers and Crown attorneys who were impacted in a very profound way and can't carry on investigations or prosecutions because the level at which this touches them in their own life, their own connection to the community and also their own children who they now see as vulnerable in a different way.

In the course of the hearings, I heard from experts who testified about the overwhelming nature of multi-victim, multi-offender investigations like Project Truth. In relation to large historical cases, Detective Wendy Leaver said, “I believe our officers try to do the best they can with the training they have ... It's almost an impossible task to deal with it.” Similarly, Dr. Jaffe testified that multi-victim, multi-offender matters are complex and overwhelm local resources because they are “beyond what any individual agency is usually designed to deal with.”

For this reason, adequate funding and organizational support are crucial. So too is collaboration with other relevant agencies, including child protection services, school boards, and the Crown attorney, and I discuss this need further in other portions of this Report.

Selection of Officers

Detective Inspector Smith was in part responsible for the strains on his officers' time because he wanted the investigation to be carried out by a small team. He explained the rationale for this approach as follows:

The advantage of having a small team is that everybody knows everything that's going on, and I call it participatory type management. It includes the investigators, a supervisor, myself, everybody has input. We listen to everybody's ideas and then we plan a direction and we go in that direction. So, if one officer, for example, got sick or was unable to attend, one of the other officers could pick it up because he would know that other officer's case.

Detective Inspector Smith explained that the investigators assigned to him during the St. Joseph's Training School investigation were not qualified to do

historical sexual assault investigations. In addition, they came from all over Ontario, which led to lost time and other aggravations. For Project Truth, Detective Inspector Smith wanted a small team of local officers whom he could train and who wanted to work on the project.

Detective Inspector Smith initially wanted six officers to be assigned to Project Truth. This included himself, Detective Sergeant Hall, and four officers who would work in teams of two, with an older officer and a younger officer on each team. Detective Sergeant Hall would supervise the two teams. There would be at least one bilingual officer among them.

However, only Detective Constables Genier and Seguin were initially assigned in addition to Detective Inspector Smith and Detective Sergeant Hall. A third Detective Constable, Joe Dupuis, joined the team in September 1997, after Claude Marleau and C-96 came forward with allegations against ten additional perpetrators.

Pat Hall held the rank of detective sergeant when he was assigned to Project Truth in 1997 and was promoted to detective inspector in April 1999. Detective Sergeant Hall had experience conducting and supervising sexual assault investigations. He had worked on cases of historical sexual abuse, both in institutional and non-institutional settings. He had taken a number of training courses on sexual assaults and sexual abuse, including the joint Children's Aid Society–police training that was offered by the Institute for the Prevention of Child Abuse. The last course he had taken dealing with sexual assault was in December 1990, almost seven years before the beginning of Project Truth. Detective Sergeant Hall also had some experience in investigating other police officers. Between 1996 and 1999 he was responsible for conducting investigations into misconduct under the *Police Services Act* as well as into criminal actions by municipal police officers and other members of the OPP.

Detective Inspector Smith thought very highly of Detective Sergeant Hall. During the hearing, Detective Inspector Smith said:

So the best officer that I know in the OPP, and I have dealt with him for years and years, who should have been in the CIB [Criminal Investigation Bureau] but for some reason wasn't, was a fellow by the name of Pat Hall. Most experienced investigator that I know. If I was going to take this case then I wanted him.

Detective Constable Steve Seguin was the most junior member of the Project Truth team. He was hired by the OPP in 1991. When he was assigned to Project Truth in May 1997, he was promoted to the rank of detective constable. Detective

Constable Seguin had some training in sexual assault investigations through the Intermediate Constable Level IV course and the Criminal Investigations Course, but he had not taken any specialized courses on the subject. He had investigated a number of sexual assaults prior to joining Project Truth, although none of these cases involved historical allegations of male-on-male abuse.

Detective Constable Seguin remained assigned to Project Truth until January 2000. He continued to assist with various matters after leaving the project and returned to the project full-time between February 2004 and October 2005.

The second Detective Constable assigned to Project Truth was Don Genier. Detective Constable Genier was the only member of the team who spoke French. In conjunction with the Cornwall Police Service, he had investigated the allegations of sexual abuse perpetrated by Marcel Lalonde, and he was assisting the Crown with disclosure obligations and other pre-trial matters on that case when Project Truth began.

A third Detective Constable, Joe Dupuis, was assigned to Project Truth in September 1997. Joe Dupuis became an OPP officer in 1972 and retired in May 2003. He had taken the Criminal Investigations Course, but no courses that were solely devoted to sexual assault investigations.

Other officers had been considered for the team but were not available or turned the assignment down. None of the Detective Constables had experience or training in investigating historical sexual assaults.

It is unfortunate that the OPP did not draw on the officers in the region who had experience investigating historical and non-institutional sexual abuse, such as those involved in Project Jericho. The Project Truth team also failed to make use of the Regional Sexual Abuse Coordinator and her Assistant Coordinator, who were in place at the time.

No female officers were considered for positions on Project Truth. Although the allegations in the Fantino Brief primarily involved male-on-male abuse, Project Truth's mandate was not limited to male victims, and a number of female victims did in fact come forward. In addition, some male victims may prefer to speak to a female officer about their experience. It is my view that victims should be given a choice as to the gender of the officer.

Another problem with the team selected was that it put a strain on the work force in the local detachments. Both Detective Constables Genier and Dupuis were based out of the Long Sault Detachment before joining Project Truth. Detective Inspector Smith was concerned about taking too many resources from the region, and asked for Detective Constable Dupuis only after he was unable to obtain an officer from another jurisdiction whom he had requested. The Long Sault Detachment was left short-staffed, which contributed to significant problems,

including a failure to act on a complaint about Jean Luc Leblanc that is discussed later in this chapter.

The final member of the Project Truth team was Marion Burns, the project's administrative assistant.

Mandate

During the spring of 1997, Detective Inspector Smith and Detective Sergeant Hall developed the mandate for Project Truth, based on the materials contained in the Fantino Brief and the statement given by Ron Leroux to the OPP in Orillia in February 1997. I discuss the mandate at length in a separate section of this chapter. It is sufficient to say here that the mandate was largely based on the allegations contained in the Fantino Brief and had two components: (1) to investigate individual allegations of sexual abuse in Cornwall and area, both historical and ongoing; and (2) to examine an alleged conspiracy among some of the suspects, as well as the Diocese of Alexandria-Cornwall, the Crown attorney, and the Cornwall Police Service.

Interactions With Other Institutions

Involvement of the Crown

The initial plan for Project Truth called for Crown attorneys to play a role in reviewing evidence gathered by police and to give advice on the laying of charges. This is not the norm in most police investigations but is more common in special projects. Typically, the police make decisions about whether they have reasonable and probable grounds to lay a charge without input from the Crown. There are a number of reasons for consulting the Crown in cases of historical sexual abuse, however, and Detective Inspector Smith had used this approach in some of his prior investigations.

Due to amendments to sexual assault provisions in the *Criminal Code*, the police sometimes required advice on which charges to lay. In addition, historical allegations can be more difficult to prove at trial because of the lack of physical evidence and the fading memories of victims and witnesses. Thus, the police may consult with the Crown to determine whether there is a reasonable prospect of conviction based on the evidence available, rather than laying charges prematurely. Unfortunately, as described elsewhere in this Report, in some cases there were significant delays in receiving an opinion from the Crown. These delays are explained in part by the fact that no dedicated Crown was assigned to Project Truth. I discuss this issue in Chapter 11, "Institutional Response of the Ministry of the Attorney General."

Initial Meetings With the Cornwall Police Service (CPS)

In the months when the OPP was putting together the plan for Project Truth, Detective Inspector Smith had a number of meetings with the CPS to inform them of the investigation and to coordinate their work.

CPS Chief Anthony Repa initially contacted Detective Inspector Smith on April 16, 1997, and informed him of the allegations made by Constable Perry Dunlop in his civil action against the Cornwall police and others. Detective Inspector Smith testified that Chief Repa volunteered to send him a copy of the amended statement of claim. Detective Inspector Smith wanted to compare this document to the one he had received in the Fantino Brief.

Detective Inspector Smith sent Chief Repa a formal letter a few days later to inform him that the OPP would be investigating all criminal allegations contained in the civil action, regardless of where the crimes had taken place. Detective Inspector Smith informed Chief Repa of the upcoming April 24 meeting with regional Crown Peter Griffiths. Chief Repa testified that he would have promised Detective Inspector Smith the full cooperation of the Cornwall Police Service.

Chief Repa did not recall if he received any documentation about the matters that had been decided at the April 24 meeting. However, on May 14, 1997, Detective Inspector Smith informed him that he would be investigating all of the allegations made by Constable Dunlop and Charles Bourgeois, both in Cornwall and in the surrounding area. Detective Inspector Smith recalled that Chief Repa insisted that he did not want Project Truth to become a task force that investigated every sexual assault in town. Detective Inspector Smith agreed and told him that the OPP was to look at the allegations made in the Fantino Brief. Unfortunately, no formal protocol was put in place, and issues did arise with respect to overlapping jurisdiction. These are discussed below in the section addressing Project Truth's mandate.

Detective Inspector Smith also asked Chief Repa if he could set up a meeting to speak to Constable Dunlop and "lay down some ground rules." Detective Inspector Smith testified that he wanted to thank Constable Dunlop for his brief and ask him to refer complainants to the OPP and to refrain from making comments in the press that could jeopardize the investigation. This meeting is discussed in more detail in the section "Interactions Between Project Truth and Constable Perry Dunlop."

Chief Repa tasked Inspector Richard Trew to act as a liaison between the two police forces. He was to ensure that the OPP received any documents needed from the CPS. Inspector Trew was also to deal with Constable Dunlop and ensure that he turned over all material in his possession to the OPP. Inspector Trew was chosen for this role primarily because he was one of the few people at the upper

level of the CPS who was not being sued by Constable Dunlop. Staff Sergeant Garry Derochie replaced Inspector Trew in late September 1999 as the liaison with the OPP.

Initial Meeting With the Children's Aid Society (CAS)

On May 15, 1997, Detective Inspector Smith contacted Richard Abell, executive director of the Children's Aid Society (CAS), informed him about the allegations in the Fantino Brief, and told him that the OPP would be investigating allegations of abuse involving prominent people in the community. Mr. Abell told Detective Inspector Smith that neither Constable Dunlop nor Mr. Bourgeois had told him about the allegations; rather he had learned of them from the Diocese. Detective Inspector Smith suggested that the CAS and the OPP work together on the investigation, with the OPP acting as the lead agency.

Detective Inspector Smith met with Mr. Abell and Bill Carriere on May 21, 1997, to discuss how the CAS and the OPP could work together during Project Truth. Also at this meeting were Detective Constables Steve Seguin and Don Genier. Detective Sergeant Pat Hall was briefed afterwards. At the meeting, Detective Inspector Smith provided the CAS with a copy of the Fantino Brief so the CAS could review it for any allegations about current abuse.

A wide range of matters was discussed at this meeting, and the following decisions were made:

- The OPP would interview Ron Leroux without the CAS present, although the CAS could provide the OPP with a list of questions to be asked.
- The OPP would give the CAS all records of interviews.
- The CAS would speak to senior Church officials about access of accused clergy members to children.
- The CAS would explore treatment resources for any victims who came forward.
- The CAS's response to any media inquiries would include an invitation for victims to come forward to either the police or the CAS.
- If the CAS was approached by a victim, it would take a statement and encourage the individual to speak to the OPP.
- The OPP would inform victims that it was working with the CAS and encourage them to talk to the CAS.
- The OPP would inform the CAS of any suspects who had access to children and of any children believed to be in danger.
- The OPP and the CAS would conduct parallel investigations into allegations of abuse and would share information.

Although an agreement was reached on these points, no written protocol was put in place to formalize the arrangement. Both Detective Inspector Smith and Mr. Abell testified that it would have been advisable to exchange a letter of understanding or a formal protocol to confirm the respective tasks of each institution.

Unfortunately, in the absence of a protocol, both institutions failed to follow up on various elements of their agreement, and they never initiated a joint investigation.

For example, the OPP did not provide the CAS with every statement that they took. Mr. Abell testified that he was glad not to receive every statement, because this would have been impossible for the CAS to deal with as it had trouble storing its own materials. Nor did the OPP systematically inform the CAS of all suspects so that the CAS could assess whether there were children at risk. The CAS was informed of the names of some suspects just prior to or only after their arrest.

Detective Inspector Hall testified that the statements taken by Project Truth were available to the CAS upon request. By passively allowing the CAS to view his files rather than proactively keeping the CAS informed of individual suspects who were under investigation, he may have complied with the letter of the agreement with CAS, but not its spirit. The purpose of the arrangement was to allow CAS to assist victims and to keep children out of harm's way. There was no need to wait until an arrest to engage the participation of the CAS.

Both the OPP and the CAS said that they had a good relationship. Although they did not have regular meetings or a designated liaison officer, Detective Inspector Hall testified that the lines of communication remained open.

Nonetheless, I find that more could have been done to ensure effective communication and cooperation. In particular, I believe a written protocol between the two agencies would have clearly defined their respective roles and would have led to more information sharing. The OPP's failure to develop and apply proper practices with the CAS is particularly unfortunate in Project Truth cases that involved allegations of current abuse, such as the Jean Luc Leblanc and Jacques Leduc investigations. I discuss these shortcomings below in sections devoted to these individual investigations.

Getting the Investigation Started

Shortly after the meeting between the Project Truth officers and Detective Inspector Sweeney on May 14, 1997, Detective Constable Seguin began identifying the various suspects, alleged victims, and other relevant information contained in the materials provided by Constable Dunlop and the statement given by Ron Leroux. It took several months to complete this task.

The operational plan was completed and submitted on June 12, 1997. It was initially rejected and additional information was requested. Detective Inspector Hall attributed the delay in approval to an internal dispute within the OPP:

I think there was a difference of opinion as to what should have been in there and there was also a different opinion as to who should be paying for it; whether it should be headquarters in Orillia or whether it should come out of regional funds.

Detective Inspector Smith explained the delay as follows:

We were in the throes of change within the OPP and we had a new deputy commissioner who had no investigative experience whatsoever and who was, what I would call, a bean counter. And I had four senior officers that had all kinds of investigative experience and had written operational plans who had signed my operational plan and there were games being played.

I think we were in the throes of having a new commissioner at that time and there were people jockeying for that position and I think that I got caught in the middle of that ...

Prior to the approval of the plan, Detective Inspector Smith was self-funding some of the expenses associated with the investigation.

At the end of July 1997, Detective Inspector Smith was informed that the funding for the project had been approved, and Detective Sergeant Hall was given a cheque for \$10,000 to get Project Truth off the ground. The operational plan may not have been officially approved at that point in time, but the officers were given the go-ahead to begin the investigation.

Both Detective Inspectors Hall and Smith testified that they did not feel that the delay in approving the operational plan impeded their investigation. Detective Inspector Hall said that they needed this time to dissect the Fantino Brief and determine the direction of the investigation.

The officers were aware of the need to quickly investigate the allegations against Father Charles MacDonald because there was an ongoing prosecution against him. However, no interviews were conducted in relation to these allegations until September 1997. This is obviously troublesome given that delay ultimately became an issue in this prosecution.

In my view, the Criminal Investigation Bureau's delay in approving the operational plan and releasing funds could have created significant obstacles,

and I therefore find the OPP failed to secure, make available, and assign resources to Project Truth in a timely manner. I would have recommended an overhaul of the approval process but was informed during the hearings that this has already taken place. According to Deputy Commissioner Chris Lewis, “Back in those days, we had one part-time person that processed all that. There was inconsistency in the forms, there was inconsistency in the approval process, and it was frustrating.”

He said the system is now much improved: there are several people working in this area, and the forms are standardized and can be filed electronically. Deputy Commissioner Lewis testified that “the Pat Halls of the current day will get their project plans in through a consistent format and be able to get what they can justify and truly need.”

Initial Media Announcements of Project Truth

Shortly after the financing for Project Truth was approved, Detective Inspector Klancy Grasman spoke with the *Ottawa Sun* about the investigation. An article appeared in the *Ottawa Sun* on July 26, 1997, announcing the beginning of the investigation. A similar article appeared in the *Brockville Recorder and Times* on July 28. This article said that Project Truth would be investigating a “purported pedophile group in Cornwall.” The article criticized the Ontario Provincial Police (OPP) for not commencing the investigation sooner, given that it had been aware of the allegations for months.

Press Release

These articles were published before an official press release for Project Truth was issued on July 28. This press release stated, “The Major Cases Section of the Ontario Provincial Police is investigating allegations of sexual abuse in the Cornwall, Ont. area ... OPP investigators have been investigating since early spring (1997) and will continue to do so.” Detective Inspector Tim Smith testified that he did not have input into this press release, but noted that the investigation into the death threats against the Dunlop family had been ongoing for several months, and that the OPP had been doing some other work on the investigation.

In my view, the press release is misleading and overstates the work done by the OPP up to this point. It is unclear whether the OPP planned to make an official announcement for the beginning of the project, or whether it released this statement in reaction to the negative publicity in the press. The operational plan for Project Truth did not set out a clear media strategy. It simply said, “If deemed

necessary, a press release will be made with advice on its presentation from Media Relations.” Detective Inspector Pat Hall testified that any media strategy would have come out of OPP Headquarters in Orillia.

The media coverage surrounding the start of Project Truth encouraged victims to come forward. On July 28, 1997, Claude Marleau contacted the OPP alleging that numerous men had abused him. His friend, C-96, also came forward with allegations of abuse at this time. Mr. Marleau testified that he had seen an article about sexual abuse in Cornwall on July 27 in *Le Soleil*, a Quebec City paper, which referred to the *Ottawa Sun* article. Mr. Marleau said that this article motivated him and his friend to contact Project Truth, in order to protect children in the Diocese from ongoing abuse:

[J]amais ça m’était passé par la tête de judiciaiser cela jusqu’à ce que je vois dans le journal qu’il y avait encore des enfants dans le Diocèse ici qui se faisaient abuser. Bon, bien, c’était assez. Ça paraît peut-être chevalier de ma part, mais c’était cela qui me guidait et c’est cela qui guidait mon copain à l’époque.

Press Conference

The OPP held an official press conference on September 25, 1997. By then, the Project Truth office had been set up and they wanted to make the phone number available to the public. Detective Inspector Smith testified that he and Detective Sergeant Hall requested the press conference also to fill the information vacuum:

Pat Hall and I asked for these news conferences because of all the press that had been coming along ... our force had a propensity for giving out limited information, and I’d indicated to my superiors, you know, that we’re getting all types of rumours down here, all kinds of different press, we’ve got to do something, we have to say something.

Neither Detective Inspector Smith nor Detective Sergeant Hall attended the press conference. Detective Inspector Smith said he did not want to have to answer questions about the specifics of the ongoing investigation. Instead, Superintendent Carson Fougère, Director of Operations, Eastern Region, was present at the press conference. Superintendent Fougère had a more limited knowledge of the investigation and thus would not reveal evidence being considered by the police when answering questions. OPP Detective Superintendent Larry Edgar and Cornwall Police Service Inspector Richard Trew also attended.

Superintendent Fougère was briefed by both Detective Inspector Smith and Detective Sergeant Hall before the conference, and they put together some of the materials that Superintendent Fougère relied upon. A press release prepared by a media specialist within the OPP accompanied Superintendent Fougère's media package.

The media release stated, "Any male person who may have been, or is presently being sexually abused by a paedophile, or has any information regarding this type of activity is urged to call the investigators," thus implying that Project Truth was limited to allegations of abuse perpetrated against men. This was a mistake. Although the Fantino Brief was largely about male victims, some allegations related to possible female victims, and Project Truth later investigated a few allegations brought forward by women.

The media coverage following the press conference emphasized that the OPP was investigating the existence of a pedophile ring. Detective Inspector Smith said that this was the media's spin and was not the message being sent by the OPP. Superintendent Fougère testified that it was not his practice to correct errors made by the press.

Just as victims came forward after the media coverage in July 1997, additional victims contacted the OPP following the September press conference. C-101 came forward the following day, and Kevin Upper contacted Project Truth four days later.

Detective Inspectors Smith and Hall, and Detective Constable Steve Seguin, testified that the media coverage had the effect of encouraging victims to come forward.

I commend the officers for recognizing that the media can have a positive effect on an investigation, and I applaud Detective Inspectors Smith and Hall for requesting the initial press conference. It appears that Detective Inspector Smith in particular recognized the need to keep the press informed. However, I find the efforts of the OPP in this regard insufficient and appreciate Detective Inspector Smith's candour in recognizing that mistakes were made. Detective Inspector Smith admitted that the OPP had done a poor job of letting the public know what was going on throughout the Project Truth investigation. The OPP's response to media covering Project Truth is further discussed in the section "External Pressures: The Media, Websites and Garry Guzzo."

Overview of Project Truth Investigations

The Duration of Project Truth

The planning stages of Project Truth began in spring 1997, with the review of the Fantino Brief and the meeting held on April 24 in which it was decided that the allegations in the Fantino Brief would be investigated.

The investigative phase of Project Truth began in earnest immediately after the media coverage at the end of July 1997, with the interviews of Claude Marleau and C-96. As previously discussed, some of the officers had begun working shortly after the April 24 meeting on arranging the logistics for the project and on analyzing the materials in the Fantino Brief in order to plan the investigation.

The investigative stage of Project Truth concluded three years later, in the summer of 2000. An official press release announcing the end of the investigation was issued in August 2001 after the officers received an opinion on the last of the Crown briefs. Project Truth officers remained available to deal with incoming complaints through their local Ontario Provincial Police (OPP) detachments, and continued to provide assistance with ongoing prosecutions. The last Project Truth prosecution ended on October 18, 2004, when Justice Plantana stayed the proceedings against Jacques Leduc.

Number of Victims and Suspects Identified

After their initial review of the Fantino Brief, Project Truth officers identified eighteen men as potential suspects. OPP records indicate that throughout Project Truth, seventy-one individuals were identified as suspects in sexual abuse investigations. The Cornwall Police Service and the Diocese of Alexandria-Cornwall were also investigated during the conspiracy investigation. Sixty-nine individuals are recorded as coming forward to Project Truth with allegations of sexual abuse.

These figures are based on OPP records. Having reviewed the evidence, I have found some minor inconsistencies in the manner in which victims and suspects were entered into Project Truth's database. For example, in some instances where complaints were referred to another police agency, the names of the complainants and alleged suspects were not included in the Project Truth register documents, and in other instances they were. In addition, some individuals who disclosed abuse but did not want to make a formal complaint were listed as witnesses rather than as victims. As a result, these statistics appear to underestimate the total number of complainants and alleged perpetrators known to Project Truth.

Over the course of Project Truth, the officers took several hundred statements from victims, witnesses, and suspects.

Suspects Not Investigated

Project Truth did not investigate all seventy-one suspects listed in its database. At least fourteen suspects had died prior to the start of the investigation. In addition, Project Truth officers determined that at least eighteen alleged perpetrators did not

fall within Project Truth's mandate. Some of these suspects were referred to other police forces.

Suspects Investigated but Not Charged

A number of individuals were identified as suspects but were not charged for a variety of reasons. In four cases, the suspects were investigated but died prior to charges being laid. Other suspects were not charged because no victims had been identified, the suspect could not be found, or the victim was reluctant to come forward. Thirteen other individuals were investigated, but the police determined that charges were not warranted.

Charges Laid and Outcome of Prosecutions

Project Truth laid 115 charges against fifteen suspects in relation to allegations of sexual abuse made by thirty-four individuals. Project Truth officers were also involved in the court process in relation to the six charges that were laid against Father Charles MacDonald in 1996 involving three additional victims.

Of the fifteen individuals arrested by Project Truth, only one was convicted in Ontario. This appears to be the statistic most frequently cited in the media and by Project Truth's detractors, but it does not tell the whole story. Convictions were obtained in two cases related to Project Truth. Marcel Lalonde, an alleged perpetrator mentioned in the Fantino Brief, was investigated jointly by the OPP and the Cornwall Police Service and was convicted on a number of abuse-related charges. Although this was not a Project Truth case, the OPP's investigator in this matter was Detective Constable Don Genier, who was a member of Project Truth. Father Paul Lapierre was prosecuted in both Ontario and Quebec. Although he was acquitted on the Project Truth charges in Ontario, he was convicted in Quebec of charges brought by Quebec police as a result of investigative work done by Project Truth officers.

Of the other individuals arrested by Project Truth, four suspects, including Father Lapierre, were found not guilty after a trial. Four suspects died before their trials.

In three other cases, the Crown withdrew the charges prior to trial. The charges against Keith Jodoin were withdrawn because the Crown determined that there was no reasonable prospect of conviction. In the Bernard Sauvé and Father Romeo Major cases, the charges were withdrawn because the alleged victims were too ill or unwilling to proceed.

Three other cases ended in a stay of proceedings. In the case of Brother Leonel Romeo Carriere, the charges were stayed because he was too ill to make full answer and defence at a trial. In the case of Father Charles MacDonald, the

charges were stayed due to delay. The charges against Jacques Leduc were initially stayed due to willful non-disclosure. The stay was successfully appealed, but a further stay was granted during the retrial due to delay. These cases are discussed in detail in Chapter 11, dealing with the institutional response of the Ministry of the Attorney General.

Daily Workings of Project Truth

Roles of the Officers

Throughout Project Truth, Detective Sergeant Pat Hall was responsible for day-to-day decisions such as assigning tasks and giving direction to the investigators. While Detective Inspector Tim Smith was the case manager, he made major decisions, such as whether a person should be arrested, or whether an allegation fell within the project mandate, but often in conjunction with Detective Sergeant Hall. The two officers were in close contact with one another, even though Detective Inspector Smith was not often in the office. Pat Hall was promoted to Detective Inspector and became case manager in April 1999, after Detective Inspector Smith effectively retired, at which point he made these decisions on his own.

The case manager was responsible for reporting to the Criminal Investigation Bureau (CIB) in Orillia. Detective Inspector Smith testified that he would have reported to the Director or the Deputy Director of CIB. After Detective Inspector Hall became case manager, he submitted written reports beginning in July 2000. His first report included an overview of the Project Truth investigation to date.

Detective Inspector Smith was responsible for prioritizing the investigations conducted by Project Truth, and Detective Inspector Hall took on this task after Detective Inspector Smith retired.

Each investigation was assigned a lead investigator. Although one person was designated as the officer responsible for the investigation, the officers were supposed to share information and assist each other on their cases. Detective Inspector Hall was the only person who read every statement. Information sharing between the officers was done informally.

Detective Inspector Hall supervised Detective Constables Steve Seguin, Don Genier, and Joe Dupuis. He met with them regularly and made decisions about whom to interview, which allegations to follow up on, and whether certain tasks should take priority. Although Detective Inspector Hall closely managed and directed the investigative work of his officers, the officers made some of their own decisions to follow up on information they received. Detective Inspector Hall reviewed every statement they took. He also reviewed, and in some cases prepared, the Crown briefs before they were submitted.

The vast majority of the Project Truth interviews were conducted by Detective Constables Seguin, Genier, and Dupuis. Detective Inspector Smith participated in only a few interviews. Detective Inspector Hall was involved in some investigative work, particularly in relation to the death threat and conspiracy investigations.

After arrests were made, the officers remained involved in the trial process. They assisted with the disclosure of documents to the defence, assisted the Crown in preparing witnesses, and delivered subpoenas to victims and witnesses. The officers also provided some assistance to the victims, as described at the end of this section.

Availability of the Officers

The officers assigned to Project Truth did not work on the project full-time. They had other ongoing work and were often called away from the project to assist officers at the local detachments.

The supervising officer, Detective Sergeant Hall, and the case manager, Detective Inspector Smith, were also away from the project on a regular basis due to other work assignments.

Detective Constables Seguin and Dupuis both testified that Detective Inspector Hall was at the Project Truth office almost every day. However, Detective Inspector Hall testified that he was regularly assigned other work and that when he became detective inspector and case manager in 1999, no more than 50 percent of his time was devoted to Project Truth.

Detective Inspector Smith was at the office significantly less frequently. He testified that he never spent more than one or two days per week on Project Truth, and he acknowledged that there were some periods when he was away from the project for months at a time. Detective Inspector Smith testified that he spoke to Detective Inspector Hall by phone while he was away, but he did not take any notes of these conversations. This was not the only gap in Detective Inspector Smith's notes. In comparison to Detective Inspector Hall's notes, which I observed to be consistently of good quality, Detective Inspector Smith's notes appeared less thorough and were sometimes lacking in detail.

Problems With Staffing

In my view, staffing was a problem for Project Truth. There were not enough officers, and those assigned to the project were not exclusively devoted to the investigation.

Detective Inspector Smith's plan for the investigation, outlined above under "Initial Plan and Initial Coordination Meetings for Project Truth," called for a team

of four investigating officers as well as a supervisor and a case manager. Instead, only three investigating officers were assigned. As Project Truth went on, many new victims came forward, thus increasing the number of alleged perpetrators under investigation.

Detective Inspector Hall testified that the officers were overworked and Detective Constable Seguin said that they regularly worked long days. Detective Constable Seguin testified that the investigations would have proceeded more quickly had the project had additional resources. It is my view that the Ontario Provincial Police (OPP) failed to assign sufficient resources to Project Truth to ensure that investigations into historical sexual abuse were conducted in a timely manner.

Detective Inspector Hall testified that he did not ask for additional officers. He said, “[T]he reason why I didn’t ask is I knew there was nothing available. I mean, resources were a problem.”

Despite his belief that additional resources would not have been forthcoming, in hindsight I find it unfortunate that Detective Inspectors Hall and Smith never formally requested them. As noted above, Detective Inspector Hall did not submit a report to the CIB until July of 2000. It is difficult to assess whether the OPP would have provided additional human or financial resources had a request been made justifying their need based on the significant increase in the size of the project, but in hindsight, this would probably have been a useful strategy.

A second staffing problem that arose was the lack of specialized training on sexual abuse investigations among the officers assigned to Project Truth. Detective Inspector Smith testified that he wanted a small team of dedicated officers whom he could train. However, there was little opportunity for such training to take place. Detective Inspector Smith did not directly oversee the officers’ work and spent little time at the office.

Detective Inspector Smith gave the officers some initial instructions on conducting interviews during the May 14, 1997, meeting with Detective Inspector Leo Sweeney, Detective Sergeant Hall, and Detective Constables Seguin and Genier. Detective Inspector Smith also explained to the officers that it was important to “be there” for the victims, and that the victims needed support. Detective Inspector Hall testified that in the fall of 1997, when Detective Inspector Smith perceived a problem in the way statements were being taken, he showed the officers some of the briefs that he had prepared in the Alfred training school investigation to give them an idea of what he expected. Both Detective Inspectors Hall and Smith said that there was improvement after this.

However, the officers were not given any in-depth training on male-on-male historical sexual abuse either before or during the investigation. Detective Constable Seguin testified that he did not recall whether Detective Inspector

Smith gave the officers specific instructions on how to take interviews from people, and noted that it would have been useful to have some kind of specific protocol or set of guidelines to deal with male-on-male historic allegations.

The importance of proper training, particularly in sexual assault and child sexual abuse cases, cannot be understated. Expert witness Detective Wendy Leaver testified, "No one should be interviewing a victim unless they've been trained." Interviewing complainants in sexual assault cases requires particular skill and sensitivity because the victim "for the first time in their life, is disclosing to you ... one of the worst situations that has ever happened to them."

In addition, properly trained officers obtain better results in interviews. Dr. Peter Jaffe testified that sometimes incremental disclosure, whereby a complainant reveals the full extent of his or her abuse only over the course of a series of interviews or statements, is impossible to avoid. This can create inconsistencies and disclosure problems in criminal proceedings. However, with "enhanced skill and patience and collaboration," it is possible to reduce the instances of incremental disclosure. Dr. Jaffe noted that skilled interviewers have a way of "creating a climate" in which complainants are more open and forthcoming about their experience.

In my view the OPP failed to properly train the investigators in the conduct of investigations into allegations of sexual abuse, including historical abuse.

Officers chosen to take part in special projects should have specialized training. I recommend that in the future, before police officers are selected for special investigations, a thorough check of their training history should be conducted. If deficiencies are noted, extra training should be provided. Deputy Commissioner Chris Lewis acknowledged that the officers assigned to Project Truth did not have adequate training. He also testified, "We would not have another Project Truth-type investigation" wherein officers were not specially trained, because adequacy standards have been introduced that require special training for any officer investigating a sexual assault. Accordingly, my recommendation should not be difficult to implement.

I would also recommend that officers who investigate historical sexual abuse be provided with periodic refresher courses or seminars, in order to sharpen their skills and to update them on new developments in the understanding of historical sexual abuse, in the law relating to these cases, and in best practices in investigating them.

Detective Inspector Smith made contradictory comments about the officers' performance. According to a will-state of Superintendent Sweeney, prepared for this Inquiry, Detective Inspector Smith said the following in a pre-retirement telephone call on February 23, 1999:

Pat Hall would be an excellent person to replace Smith. The detectives are not self-starters and self-initiated, Genier is good. Joe talks too much, likes to be important. Seguin is always looking for an easy way out.

At the hearing, Detective Inspector Smith confirmed that he made these comments, but also said that despite this, he had no concerns about how he staffed his team, and that in hindsight, he would not have staffed the team differently. Detective Inspector Smith said of his officers, “They believed in this investigation. They ate, lived, slept it.”

The hard work and dedication of the police officers assigned to Project Truth is evident. The officers involved gave up other opportunities and probably missed out on overtime pay they would have earned had they remained at their local detachments. Whatever the shortcomings of particular investigations, I have no doubt that the officers involved were committed to Project Truth.

Case Management

A software program called ACCESS was put in place to assist the officers in tracking the investigation. ACCESS was an existing program that was adapted for use by Project Truth. It was a relatively new program, and this was the first time that Detective Sergeant Hall had used it.

The program allowed officers to place each individual interviewed into a category: suspect, victim, witness, or “other.”

The program allowed the officers to track suspects, victims, persons giving statements, Crown briefs, charges, and court appearances. Detective Inspector Hall testified that the system was helpful in allowing him to keep track of all the people involved in the investigation. He also said that it was helpful in producing statistics for press releases. The electronic file system was backed up by a physical file system in the office.

The ACCESS program was also used to generate a list of statements to be included in Crown briefs, and thus assisted the officers in this work. The officers would use this list to identify the relevant pages in their notebooks to be disclosed along with their will-states.

One of the weaknesses in the system, however, was that it would not identify documents relevant for disclosure purposes if that document was not associated with a statement taken by an officer. This is one reason why Detective Constable Dupuis’ notes of the conversation between C-16’s mother and Constable Perry Dunlop was not initially provided to the Crown in the Jacques Leduc prosecution; the incident was not associated with a statement, and thus was not entered into

the ACCESS system.³¹ Detective Inspector Hall testified that the contact with Constable Dunlop would have been identified if only Detective Constable Dupuis had consciously recalled it while he was preparing his will-state. This issue is discussed further in the section on the investigation of Jacques Leduc.

The ACCESS program was also used to help the officers keep track of the relationships between the various individuals connected to the project. The tracking of linkages is discussed in more detail later in this chapter.

Office Space

Project Truth operated out of three locations during the course of the investigation. It was initially located at the OPP's Lancaster Detachment. In September 1997, the office moved to space rented from the Ministry of the Environment on Amelia Street in Cornwall. As the investigative phase of Project Truth wound down in the summer of 2000, the office moved again to the OPP's Long Sault Detachment.

There was a break-in at the office on Amelia Street on May 20, 1998. A computer and a laptop were stolen. The filing cabinet was broken into, but no files were taken. Detective Inspector Hall testified that the missing computers held no information that would have compromised the investigation and that the investigators did not lose any information as a result of the theft. The break-in was investigated by the Cornwall Police Service (CPS), which determined that the intruders were just looking for money. I heard no evidence that the break-in compromised the investigation in any way.

Materials From Previous Investigations

The officers gave mixed testimony about whether they had all of the materials from previous investigations into matters relevant to Project Truth, such as the 1993 CPS investigation into allegations made by David Silmser against Father Charles MacDonald, the 1994 Ottawa Police Service review of this investigation, Detective Inspector Smith's 1994 investigations, and Detective Inspector Fred Hamelink's investigation into allegations that Mr. Silmser was attempting to extort Ken Seguin.

Detective Inspector Hall was uncertain in his testimony, but said that he believed that in the fall of 1997 they had all of these materials except Detective Inspector Hamelink's extortion investigation.

31. The non-disclosure of this conversation created significant problems in the Leduc prosecution.

This is addressed in the section of this chapter dealing with the Jacques Leduc investigation and prosecution.

However, Detective Constable Dupuis testified that in September 1997 he did not have a copy of the initial investigation into Father MacDonald. Detective Constable Dupuis also said that when he began working on the Project Truth conspiracy investigation, he was not aware that Detective Inspector Smith had conducted a similar investigation in 1994. In fact, Detective Constable Dupuis' notes indicate that he received all of the above materials, with the exception of Detective Inspector Hamelink's investigation, when he met with Detective Constable Michael Fagan on November 26, 1998.

It is clear then, that even if Project Truth was in possession of the materials, one of its investigators was unaware of their existence. This is a further indication of Detective Inspector Smith's limited involvement. He should have briefed his team on his 1994 investigations at the outset of Project Truth and ensured the officer assigned as lead investigator of the Father MacDonald and the conspiracy investigations, Detective Constable Dupuis, had the relevant information.

Detective Inspector Hall said that he obtained an edited version of the materials from Detective Inspector Hamelink's extortion investigation either from the Criminal Injuries Compensation Board or through a Freedom of Information Request in late 1997 or early 1998. Detective Inspector Hall requested an unedited copy of the brief from the CIB in July 2001. It is unclear to me why it was so difficult to obtain the original brief.

Investigative Methods

One of the most important investigative methods used by Project Truth was the taking of statements. The officers would generally begin an investigation by interviewing the victim. Different formats were used for different types of witnesses. If the witness did not have a lot to say to the investigators, only a written statement would be taken. If the witness was not a victim, but had some useful information for the investigators, they would take an audio statement. The officers would also take an audio statement from witnesses who were in poor health, in case they were unable to testify in court. Statements from victims would generally be videotaped.

There were some logistical difficulties with this method. The officers often had audio equipment with them, but if they wanted to videotape an interview, they had to take the witness to a local detachment.

Ideally, interviews with vulnerable witnesses, like sexual assault complainants, should be conducted in a neutral location (rather than an interrogation room). Advances in technology and victim services since Project Truth have been made this easier to achieve. Modern video equipment is portable and interviews can be conducted in witnesses' homes if necessary. However, the technology must be capable of producing good-quality videos; otherwise the evidence is less useful in court proceedings.

Complainants can also be made more comfortable by officers who explain what to expect in the interview and how the complainant can properly prepare. This preparation may include gathering records or other documents to assist in obtaining accurate dates, and the officer may help the complainant with this task.

After statements were taken, they would be typed and transcribed. The officer who took the statement would also proofread it to ensure accuracy. Detective Inspector Hall testified that this process took some time and he would generally not read the statements until they were typed.

The alleged perpetrator was generally the last person to be interviewed. Detective Inspector Hall testified that this is a common police practice and is done to allow officers to have the most information possible before approaching the suspect.

In addition to taking statements, Project Truth included one major surveillance operation. As discussed later in this chapter, upon receiving information that Jean Luc Leblanc had been recently seen with children, a multi-day surveillance operation was put in place that allowed the officers to identify one of Mr. Leblanc's victims. There was also a brief period of surveillance in August 2001. The officers followed Jacques Leduc's wife for less than an hour when she had set up a meeting with one of Mr. Leduc's alleged victims. Although the allegations made against Mr. Leduc were also current, no other surveillance was used in the course of that investigation.

Another investigative method employed was the gathering of institutional records in order to corroborate various facts and dates surrounding the allegations. The officers obtained school records and driver's licence histories, for example. They also obtained a variety of documents from the Diocese and from Church officials that gave identifying information about priests and allowed the officers to establish the date and place of the priests' postings. Some of these documents were subjected to forensic analysis to ensure they had not been altered. The officers also took photographs and made diagrams of various locations where abuse had allegedly occurred.

A review of the evidence indicates that the officers did not execute any search warrants throughout Project Truth. Detective Inspector Hall explained that warrants would have alerted the public as to who was under investigation:

The difficulty with search warrants is you have to file them at the court, and the information obtained is open to the public unless you get a sealing order, and I knew for a fact—I was getting calls from the media asking if we had done any search warrants. Mr. Dunlop was inquiring if we had done any search warrants, and we wanted to keep our information out of the media. So that was another reason for—if we could do our investigation by being less intrusive with a search warrant and accomplish what we wanted to do, that's the way we did it.

I note that a sealing order might have resolved these concerns. In addition, regardless of the potential consequences, there were some instances in which I believe it would have been appropriate for the officers to have executed search warrants. I point in particular to cases where the officers believed the perpetrator was in possession of child pornography, including pictures of his victims. This issue will be addressed in the sections that follow on the individual investigations.

Cooperation From the Diocese

Detective Inspector Hall testified that he had a number of meetings with Bishop Eugène LaRocque in order to obtain information for the Project Truth investigation. Detective Inspector Hall described the meeting he and Detective Inspector Smith had with Bishop LaRocque in March 1998:

We also explained that we would need certain information from the Diocese in regards to the locations of the various priests. I also discussed how that may be obtained; we could execute search warrants or he could cooperate and provide it, and he indicated that he would cooperate fully.

Detective Inspector Hall testified that he approached Bishop LaRocque on a number of occasions with requests for documents and that the Bishop cooperated. In particular the OPP requested pictures of clergy members, as well as information about where they served. The officers also attempted to obtain lists of altar boys. Due to the Bishop's cooperation, Detective Inspector Hall said that he did not have to resort to using a search warrant to obtain the Diocese's files. Where the Bishop did not have the document that was requested, he made suggestions about how the information could be obtained.

However, Detective Inspector Hall also stated that the Bishop "didn't volunteer anything to us" and further that "he was cooperative but he didn't go overboard."

Detective Inspector Hall never asked the Bishop whether he had any files relating to sexual misconduct by priests, and he admitted that even if the Bishop had information regarding the sexual abuse of young people by priests, "I don't think he would have provided it voluntarily."

As discussed in some detail in Chapter 8, "Institutional Response of the Diocese of Alexandria-Cornwall," the Diocese did in fact have correspondence from victims outlining their abuse, letters of concern from other community members, as well as internal investigations into alleged misconduct by priests.

Detective Inspector Hall explained that he did not attempt to obtain a search warrant to obtain files of this nature because:

I'd have to know what I was looking for. I mean you have to have some expectation there's a document there that you want to achieve by way of a search warrant, so if you're writing up your Information to obtain a search warrant you have to have some reasonable and probable grounds that it's there and there now, and—I mean it's a fishing trip.

Detective Inspector Hall was not aware that Detective Inspector Smith had used search warrants during his investigation at the Alfred training school. In my view, at minimum, the officers should have made a general request for information relating to any allegations for sexual abuse of young people by priests in the possession of the Diocese. The Bishop's response might have provided additional grounds to obtain a search warrant.

Detective Inspector Hall also made arrangements with the Bishop to contact priests ahead of their arrests in order to ask them to voluntarily come in, rather than requiring the OPP to obtain an arrest warrant.

Cooperation With the Cornwall Probation Office

I would contrast the approach of the Diocese with the proactive approach taken by the Ministry of Correctional Services. In this case, it was the Ministry that approached Project Truth for information.

As discussed in Chapter 5, "Institutional Response of the Ministry of Community Safety and Correctional Services," Paul Downing was tasked to investigate alleged wrongdoing by probations employees in August 2000, after information about certain employees appeared on one of the projecttruth.com websites.

Mr. Downing first contacted Detective Inspector Hall on August 11, 2000, to explain that he was acting as an investigator pursuant to the *Ministry of Correctional Services Act* and to arrange for an exchange of information. According to Detective Inspector Hall, Mr. Downing was particularly concerned by claims made about Father Kevin Maloney, who was a chaplain at the Cornwall jail, and Jos van Diepen, a probation officer.

Detective Inspector Hall met with Mr. Downing on September 27, 2000. Detective Inspector Hall showed him the interview report of Jos van Diepen and allowed him to take notes from it but would not give him a copy for his investigation. Detective Inspector Hall explained that the OPP has a policy that prohibits officers from providing third parties with copies of statements that are being used in ongoing investigations, other than to Crown attorneys for disclosure purposes.³² He explained that Mr. Downing could have asked Mr. van Diepen for permission to obtain his statement, or asked Crown Attorney Shelley Hallett

32. According to Detective Inspector Hall, Part 10 of the Police Orders.

for a copy. Mr. Downing testified that it “absolutely” would have helped to have a copy of Mr. van Diepen’s statement.

At this meeting Detective Inspector Hall also told Mr. Downing that his investigation had found no evidence of wrongdoing by Father Maloney. I would note that in September 2000, Detective Inspector Hall was still waiting for an opinion from the Crown on this matter.

It is my opinion that the OPP needs to develop better protocols for the sharing of information with public institutions in order to allow these institutions to respond to allegations of sexual abuse perpetrated by their employees. Likewise, public institutions should consult with policing agencies to ensure that their policies and procedures for the investigation of alleged employee misconduct do not interfere with police investigations.

Interactions With Complainants

Interacting with complainants was an important role for the officers assigned to Project Truth. This predominantly involved interviewing and taking statements from complainants, but also sometimes included assisting them in navigating through the criminal justice process and referring them to appropriate support services.

Detective Inspector Hall testified at the hearings that there was “no funding anywhere” for victim assistance and that his officers were left to make “feeble attempts” to assist victims by offering them, for example, a victim assistance videotape produced during the Project Guardian investigation in London, Ontario.

Unfortunately, at the time of Project Truth, Cornwall did not have an established Victim/Witness Assistance Program (VWAP). This program updates victims about their cases and familiarizes them with the criminal court process and the various support services available to them. The Ottawa VWAP provided support to some Project Truth complainants, with varying degrees of success. This is discussed fully in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Project Truth officers also provided some support services to complainants. In particular, the officers informed victims of court dates, assisted with Criminal Injuries Compensation Board applications, made referrals to counsellors, and, toward the end of the prosecutions, assisted with the preparation of victim impact statements.

Some of the victims who testified at the hearing were pleased with the way they were treated by Project Truth officers and were satisfied with the assistance they were provided. Others were disappointed and felt the officers were insensitive or treated them without sufficient respect and compassion. Specific examples of the assistance provided to victims, and victims’ experience with the Project Truth officers, are discussed below in the sections on particular investigations.

Project Truth's Mandate

As mentioned above, the mandate of Project Truth was based on the Fantino Brief and on Ron Leroux's February 1997 statement taken in Orillia. However, the mandate was drafted in a manner that gave the officers some discretion to investigate matters that were related to, but not contained within, these materials.

Unfortunately, it appears that the mandate was not clearly defined, was applied inconsistently, and was not well understood by non-Project Truth officers or by alleged victims. This is apparent in a number of investigations, which I briefly describe below. Specific examples of problems created by mandate issues are elaborated on in later sections.

Detective Inspector Tim Smith and Detective Sergeant Pat Hall developed the mandate for Project Truth in the spring of 1997. Its final wording was as follows:

This investigation is being conducted into paedophile activity both historic and ongoing in the Cornwall, Ontario area. The alleged suspects are prominent and respected citizens of Cornwall, and include lawyers, Catholic priests, a Catholic Bishop, teachers, probation officers, businessmen, a former Chief of Police and the present Crown Attorney. The alleged offences occurred and are occurring both in the City of Cornwall and the outlying area.

In addition, it is alleged the suspects were able to terminate investigations and prosecutions against them by abusing their positions of trust within the community. It is alleged the Crown Attorney, the Diocese of Cornwall and the Cornwall Police conspired to obstruct justice in these matters.

Although there was no mention of Constable Perry Dunlop or Chief Julian Fantino, Detective Inspector Smith testified that the "mandate of Project Truth was the Fantino Brief." Detective Inspector Hall added that the mandate stemmed from the May 27, 1997, letter from Peter Griffiths to the Ontario Provincial Police's Criminal Investigation Bureau requesting that "Det. Insp. Smith be assigned to investigate the "Dunlop/Bourgeois brief." Mr. Griffiths testified, "My understanding of what was being investigated was the contents of the Fantino Brief."

However, Detective Inspector Hall testified that the mandate was written in a manner that gave Project Truth some ability to go beyond the allegations made in the Fantino Brief:

[I]f it related to what we were investigating, to the parties investigated, if it was common victims, it could very well ... you have to have some

flexibility but we were framing it fairly tightly as to what information we had at the time we were preparing this ... It had to be connected in some way in relation to what Mr. Griffiths was asking us to do.

Detective Inspector Smith testified that there was no requirement under the mandate for any individual suspect to be in a position of trust and authority over the alleged victim.

There were two components to the mandate. The first was to investigate individual allegations of abuse. Throughout Project Truth, questions arose as to whether a particular complainant's allegations fell within the mandate of Project Truth. The second component of the mandate involved an examination of a conspiracy. The scope and quality of the conspiracy investigation is addressed later in this chapter.

Understanding of the Mandate by the OPP Outside Protect Truth

There was confusion about the scope of Project Truth's mandate among the local Ontario Provincial Police (OPP) detachments and even in the higher ranks of the OPP's command structure.

Detective Inspector Randy Millar of the Long Sault Detachment testified that his understanding was that Project Truth was only to look into cases of historical sexual abuse. Detective Constable Chris McDonell, who worked out of both Long Sault and Lancaster Detachments during Project Truth, also believed that Project Truth's mandate was to look into historical abuse. He testified that he had never seen the mandate in writing, nor had the mandate been explained to him in person.

Likewise, when Constable Charlene Davidson of the Lancaster Detachment became aware of C-16's allegations of abuse by Jacques Leduc, she did not know whether the complaint fell within Project Truth's mandate. Fortunately, she contacted Project Truth and shared the allegations with them so that they could take on the complaint.

Chief Superintendent Carson Fougère, who was Director of Operations, Eastern Region, in 1997 and acted as spokesperson during two Project Truth press conferences, testified he had never seen the mandate in writing prior to this Inquiry's hearing. Chief Superintendent Fougère said he was not aware that Project Truth was investigating the Crown attorney's office in relation to allegations of obstruction of justice.

He testified, "[M]y understanding of the mandate was to, in fact, investigate current and historic allegations of sexual abuse of people." He added that Project Truth was not gender-specific and that suspects were not limited to individuals who were a "pillar of the community." He said, "[M]y understanding was that no

one was to be excluded. We were to find out, once and for all, what is the extent, if any, of this activity.”

It is quite striking to me that Chief Superintendent Fougère, a senior official in the OPP at the time of Project Truth, believed the scope of the project to be significantly broader than it was. I am concerned that this may indicate a lack of awareness by senior OPP management of Project Truth’s mandate.

Clearly, the mandate of Project Truth was not adequately communicated to, nor understood by, all officers who had direct contact with the project. I recommend that in the future the mandate for special projects be communicated to all OPP officers and, for example, be sent to local detachments and posted in full view with a contact number to call if there are questions or a need for further information.

Understanding of Mandate by the Cornwall Police Service

Detective Inspector Smith was in touch with Cornwall Chief of Police Anthony Repa during the initiation of Project Truth. Chief Repa insisted that he did not want Project Truth to become a task force that investigated every sexual assault in Cornwall. Detective Inspector Smith agreed and told him that the OPP was going to look at the issues in the Fantino Brief. Chief Repa testified that he was not consulted about the wording of the mandate and that he did not recall seeing a written version of it.

No formal protocol was put in place to respond to questions of overlapping jurisdiction between Project Truth and the Cornwall Police Service (CPS). The expectation seemed to be that senior officers would work out any overlap or referral questions informally as they arose.

A number of CPS officers testified they were unaware of the scope of Project Truth’s mandate, and several were uncertain about when they should refer complaints to Project Truth. CPS Inspector Richard Trew testified that most complainants contacted Project Truth directly.

Detective Inspector Smith knew that jurisdictional questions were bound to arise. He was correct. Decisions regularly had to be made as to what allegations would be investigated by Project Truth. Those that did not fit the mandate needed to be referred elsewhere. Unfortunately, as I describe below, these decisions were not always made consistently or promptly and sometimes led to delays in the investigations.

Mandate Decisions

Allegations Against Marcel Lalonde

Marcel Lalonde, a schoolteacher, was arrested by the OPP in January 1997 and by the CPS on April 29, 1997, in relation to allegations of sexual abuse

made by a number of individuals. The written mandate of Project Truth developed by Detective Inspector Smith and Detective Sergeant Hall made specific reference to allegations of sexual abuse by “teachers.” Moreover, many alleged victims identified in the Fantino Brief claimed to have been abused both by Mr. Lalonde and by other suspects in the Project Truth investigations. Notwithstanding these factors, the complaints against Marcel Lalonde were not brought into Project Truth.

Detective Inspector Smith testified that the allegations against Mr. Lalonde fit the Project Truth mandate and would have been part of the special project had they not already been under investigation by the CPS and the local OPP detachment. He said he would not “take over an investigation that was well underway.”

A number of alleged victims of Marcel Lalonde had other complaints that were investigated by Project Truth. The decision to exclude Mr. Lalonde from Project Truth meant that these complainants had to cope with concurrent investigations conducted by the CPS for one alleged perpetrator and by Project Truth for another.

According to Detective Sergeant Hall, the overlapping issues and associations between Project Truth and Mr. Lalonde were not complicated. He noted that Detective Constable Genier was involved in both Project Truth and the Mr. Lalonde investigation. If there was anything Detective Constable Genier felt Detective Sergeant Hall should know regarding the Mr. Lalonde prosecution, he could advise.

In my view, the decision not to include Mr. Lalonde in the Project Truth investigations may have had an impact on the investigators’ ability to develop connections between the alleged perpetrators; properly identify materials in the possession of Project Truth required for disclosure in the Lalonde prosecution; and provide appropriate services to victims who were complainants in both the Marcel Lalonde and Project Truth prosecutions.

Claude Marleau and C-96

Once Project Truth was underway, the decision as to whether a particular allegation fell within the mandate was made either jointly by Detective Inspector Smith and Detective Sergeant Hall or by Detective Sergeant Hall on his own if Detective Inspector Smith was absent. After Detective Inspector Smith retired, Detective Inspector Hall made the decisions alone. Detective Inspector Hall testified that decisions over mandate issues were not debated for a long time; he and Detective Inspector Smith made the decision and never looked back.

The officers were faced with a major mandate decision almost immediately after the Project Truth investigation was announced to the public. On July 28, 1997, Claude Marleau contacted the OPP to disclose allegations of sexual abuse. He gave

a statement on July 31, 1997, in which he alleged that he had been abused by a number of individuals, including several Catholic priests. Mr. Marleau also alleged that he was abused by a hotel owner, a butcher, a music store owner, and a doctor who was also a Coroner. No allegations against these individuals were made in the Fantino Brief.

Detective Inspector Hall explained that Mr. Marleau's allegations clearly fell within the mandate of Project Truth because they involved members of the Catholic clergy. Some of the other individuals fit within the mandate because they were businessmen or prominent persons, and the rest were taken on because Mr. Marleau was the common victim.

When Mr. Marleau came forward, he brought his friend C-96, who also alleged that he had been sexually abused. C-96 made allegations against the butcher who had allegedly abused Mr. Marleau, as well as a restaurateur. These complaints were all taken on by Project Truth.

Mr. Marleau's allegations came to light at the very beginning of the Project Truth investigation. Although they did not involve individuals identified by Ron Leroux or Constable Perry Dunlop, I believe that it was reasonable for Project Truth to take on these cases. The officers would not have known at that point whether the priests accused by Mr. Marleau had any connection to the priests mentioned in the Fantino Brief.

However, the decision to take on these complaints set a number of precedents that expanded the Project Truth investigation well beyond the Fantino Brief. In particular, it meant that Project Truth would investigate allegations made against people who were not mentioned in the Fantino Brief if the suspect fit within one of the categories of individuals listed in the mandate, including the general category of "prominent persons."

It also suggested that Project Truth would take on complaints against people who had no link to the Fantino Brief or to any of the mandate categories if the victim also alleged abuse by someone who was within the mandate. This would avoid the problems associated with a victim having to split his or her complaint and deal with two different police forces.

Two problems arose from this decision. First, as previously mentioned, the expansion of the mandate put an additional strain on Project Truth's human and other resources. Mr. Marleau and C-96's initial complaints significantly increased the size of Project Truth from eighteen to twenty-seven suspects. Mr. Marleau later disclosed alleged abuse by an additional suspect.

Second, the precedents set with the handling of Mr. Marleau's allegations were not consistently followed. Some complainants' allegations were split between the OPP and CPS, and coordination issues then arose, as I describe below.

C-97

Detective Inspector Smith and Detective Sergeant Hall had to make a second mandate decision early on in the investigation when another victim, C-97, came forward with allegations against a number of individuals.

On September 17, 1997, Detective Constables Steve Seguin and Joe Dupuis interviewed C-97, who alleged that he had been abused by Brian Dufour and four other individuals. C-97 also told the officers that Nelson Barque invited him over to his house to do drugs, and hugged him once. C-97 said that Ken Seguin used to tell him that he looked good in his jeans and that he heard rumours about Mr. Seguin “fooling around with” C-5 and C-19. However, C-97 said that “they never did anything sexual to me.”

Brian Dufour worked at the Cornwall Youth Residence (renamed Laurencrest) when he allegedly abused C-97. C-97 told the officers that he believed that Mr. Dufour was still working as a childcare worker in Brampton.

Project Truth determined that the allegations fell within its mandate, presumably given Mr. Dufour’s occupation as a childcare worker and his connection to Laurencrest. There was also some connection to the Fantino Brief because of C-97’s contact with Mr. Seguin and Mr. Barque.

Project Truth investigated Mr. Dufour and eventually laid charges against him on April 6, 2000. Mr. Dufour died four days after his arrest, on April 11, 2000. The investigation of Brian Dufour will be discussed in greater detail later in this chapter.

Detective Inspector Hall wrote to CPS Staff Sergeant Garry Derochie on April 19, 2000, referring the outstanding allegations made by C-97 to the CPS. The letter noted that Mr. Dufour had died, and said:

In the course of interviewing [C-97], he had indicated he was sexually abused by [four other individuals].³³ There is an indication that some of the abuse has been reported to the Cornwall Police Service.

We do not feel the additional allegations of [C-97] fall within the mandate of Project Truth. Therefore, since BRIAN DUFOUR is deceased, we are attaching a complete copy of his interview of 17 SEP 97 for your attention and whatever action you deem appropriate.

I have a number of comments to make regarding this referral. First, one of the four individuals referred to CPS was the wrong person; C-97 had made

33. Names used in original letter.

allegations against a schoolmate's brother, not the schoolmate. I also note that the schoolmate is listed, wrongly, as a "suspect" in a number of Project Truth's tracking documents, such as the Association Report, and the All Involved Persons Report.

More importantly, I think the OPP acted inappropriately in referring these allegations to another police force almost three years after the initial complaint was made. At the hearing, Detective Inspector Hall was unable to justify this decision and agreed that three years was too long of a delay. Detective Inspector Hall said that if C-97 had not made allegations against Mr. Dufour, he would have decided back in 1997 that the other allegations did not fall within Project Truth's mandate.

C-10

C-10 is one of the alleged victims whose complaints were split between Project Truth and the CPS.

On February 3, 1998, C-10 gave a statement to Detective Constables Seguin and Dupuis in which he alleged that Carl Allen had abused him between 1962 and 1964. C-10 also alleged abuse by Malcolm MacDonald, Ken Seguin, and a priest named Father Scott. C-10 said that he had spoken to Constable Perry Dunlop about these allegations a few weeks previously, and that Constable Dunlop had referred him to Project Truth.

As discussed later in this chapter, Project Truth investigated the allegations against Malcolm MacDonald. However, they referred the allegations against Mr. Allen to the CPS on April 2 or 3, 1998. Mr. Allen worked as a farmhand, and although the officers did not testify on this point, it seems likely that they did not consider him a "prominent person." The OPP did not investigate or refer Father Scott, as they eventually learned that he had died prior to Project Truth.

The decision to refer one of C-10's complaints to CPS is inconsistent with the practice established with Claude Marleau and C-96, whereby Project Truth investigated all of their allegations, even though some suspects did not fall within the mandated categories.

I also note that Detective Sergeant Hall was uncomfortable sharing certain information with the CPS because the CPS was under investigation for the conspiracy to obstruct justice. Accordingly, Detective Sergeant Hall, upon advice from Detective Inspector Smith, gave the CPS only the pages of C-10's statement that related to Mr. Allen. He did not provide the portions of the statement dealing with the allegations against Mr. MacDonald and Mr. Seguin, or revealing the contact with Constable Dunlop. In addition, the statement was not given to CPS Constable René Desrosiers until June 4, 1998, two months after the complaint was referred.

C-66

C-66 was interviewed by the CPS in March 1997 and alleged that he had been abused by Marcel Lalonde. At that time, he told the CPS that he had also been abused by Bernard Sauvé but no investigation into Mr. Sauvé was conducted. In spring 1998, Project Truth became aware of allegations made by C-66 against Bernard Sauvé. Detective Sergeant Hall and Detective Inspector Smith decided that Project Truth should take on this complaint.

At the hearings, Detective Inspector Hall was unable to explain why Mr. Sauvé, a convenience store owner, fell within the mandate. He said, “[T]here may have been a reason why at the time,” and that he would have to “read the interview report to see if he mentioned any other names or whatever.” C-66’s statement contains no obvious connection to other witnesses or suspects involved in Project Truth, other than Marcel Lalonde, who was mentioned in the Fantino Brief but was not investigated by Project Truth.

In April 1997, the CPS arrested Mr. Lalonde for allegedly abusing C-66 and others, and C-66 was working with the CPS as a witness in that prosecution. The decision by Project Truth to take on the allegations against Mr. Sauvé thus meant that C-66 had to deal with two different police forces. The fact that the CPS had not acted upon his initial complaint regarding Mr. Sauvé was probably a factor in the decision.

Staff Sergeant Brian Snyder of the CPS testified that he was surprised that Project Truth took jurisdiction over the Bernard Sauvé complaint. His understanding of the Project Truth mandate was that the OPP was looking into “[h]igh profile individuals as well as multiple victims.” In his view, the Bernard Sauvé case did not fit within this mandate.

It is evident that the Project Truth mandate was not clear to CPS officers. Project Truth’s inconsistent application of the mandate undoubtedly did not help in this understanding.

As will be further described later in this chapter, Mr. Sauvé was charged on March 11, 1999. However, those charges were eventually withdrawn, in part because of C-66’s unwillingness to go forward due to stress-related health problems and anxiety about the court proceedings. I am concerned that having his allegations split between police agencies may have contributed to C-66’s stress and anxiety.

David Petepiece

The mandate decision made by Project Truth in relation to David Petepiece’s complaint is also notable. Detective Inspector Hall cited the fact that the alleged

perpetrator was an Anglican priest as one reason why no investigation was undertaken by Project Truth. In a letter to Mr. Petepiece, Detective Inspector Hall stated:

The mandate of Project Truth was to investigate historic allegations of a sexual nature involving the *Catholic Clergy* and other prominent persons in the Cornwall area. This did not include every sexual assault allegation in the City of Cornwall that was reported, and *did not include allegations against members of other religions*. (Emphasis added)

This indicates to me that, at least in this instance, Detective Inspector Hall's understanding of the mandate was quite narrow.

Mr. Petepiece's complaint and Project's Truth's handling of it are set out in detail in a later section.

St. Joseph's and St. John's Training Schools

Strictly speaking, the St. Joseph's Training School in Alfred, Ontario, and the St. John's Training School in Uxbridge, Ontario, did not fall within the mandate of Project Truth. However, Project Truth officers did investigate some religious personnel who had a connection to these schools.

Some of the allegations investigated came from the Fantino Brief. For example, C-15 alleged that Father Kevin Maloney abused him at St. Joseph's Training School. The Crown determined that Father Maloney should not be charged, because there was no evidence found that he was ever at the Alfred school.

In addition, two alleged victims came forward in the fall of 1997 and claimed that they had been abused by a brother at a branch of St. John's Training School in Alexandria. The alleged perpetrator was eventually identified as Brother Leonel Romeo Carriere. Project Truth charged Brother Carriere, but the charges were stayed due to his health. Both these cases will be discussed in greater detail later in the chapter.

Cases involving St. Joseph's were handled by the Project Truth team because Detective Inspector Smith was in charge of the Alfred investigation. When Detective Inspector Smith retired in 1999, Detective Inspector Hall inherited all of Detective Inspector Smith's outstanding cases. At times, Project Truth was asked to investigate priests from Alfred in order to help Alfred victims in their civil suits. However, Detective Inspector Hall was reluctant to use Project Truth resources in this manner if the victim did not want charges to be laid eventually.

Allegations Against Jean Luc Leblanc

The Jean Luc Leblanc case, which is more fully discussed later in the chapter, demonstrates the differing views as to Project Truth's mandate held by officers within the OPP.

Mr. Leblanc was a school bus driver and some of the allegations made against him were current. Detective Sergeant Randy Millar of the Lancaster Detachment first learned of concerns about Mr. Leblanc in September 1998 but did not follow up. Mr. Leblanc came to the attention of Project Truth in December 1998.

Detective Inspector Hall testified that Mr. Leblanc would not have been a Project Truth case if the local detachments had acted on it earlier. However, he also said that had Detective Sergeant Millar contacted him in September 1998, Project Truth would have taken it on. Detective Inspector Hall acknowledged that Mr. Leblanc had some connection to the Fantino Brief, as there were allegations made that he was connected to, and abused children in the presence of, Malcolm MacDonald.

Detective Inspector Millar testified that he did not think Mr. Leblanc fell within Project Truth's mandate. His understanding was that Project Truth was only investigating historical sexual assaults. Detective Constable McDonnell said the same.

These varying opinions make clear that within the OPP there was no common understanding of the project's mandate.

Marc Latour

On June 19, 2000, Marc Latour contacted Project Truth and told them that he had been sexually assaulted by his grade 3 teacher, Gilf Greggain, and by another person in a position of trust and authority named in the Fantino Brief.

Despite the fact that Mr. Greggain fell within one of the enumerated categories of the mandate (schoolteacher), Detective Inspector Hall determined that Mr. Latour's allegations did not fall within the Project Truth mandate.

He explained that "the information wasn't part of Mr. Dunlop's material" and that it was his view that "pretty well" only teachers who were named in the Fantino Brief fell within his mandate. Detective Inspector Hall did not look into whether there were any connections between Mr. Greggain and Marcel Lalonde, the teacher who was named in Constable Dunlop's materials. Detective Inspector Hall also appears to have disregarded the fact that there was a tie to the Fantino Brief through the allegations against the other person accused by Mr. Latour, possibly because that person was deceased.

Detective Inspector Hall was asked by counsel whether the timing of the complaint played a role in his decision that it was outside his mandate. He answered:

No, no. We were there for any allegation that came in. It didn't matter. Even after Project Truth was concluded, if somebody came with an allegation after, the officers were prepared to investigate it.

He noted that once Project Truth was effectively shut down, the officers remained available through their local detachments.

However, Detective Inspector Hall also testified that in the summer of 2000, Project Truth was in the process of winding down and the last Crown brief was submitted in August 2000. He also acknowledged that in June 2000, he was tying his mandate "very tightly" to the Fantino Brief. In my view, this decision indicates that by the summer of 2000, the scope of the Project Truth mandate was considerably narrower, at least in Detective Inspector Hall's mind, than it was in spring 1997 when Claude Marleau and C-96's complaints were taken on by the project.

Detective Inspector Hall wrote to Staff Sergeant Rick Carter of the CPS and referred the allegations to him, saying, "Mr. Latour was advised he would be contacted by an officer from your Police Service." The CPS investigation of these allegations is discussed in Chapter 6, on the institutional response of the Cornwall Community Police Service.

C-14

On October 17, 2000, C-14 contacted Detective Inspector Hall and alleged that he had been abused by two individuals. One of the alleged perpetrators was deceased. The other was a mentally challenged boarder who had lived at the same group home as C-14 in the 1970s. C-14 had been referred to Project Truth by MPP Garry Guzzo's office. C-14 told Detective Inspector Hall that the OPP had looked at the matter in 1991 but did not pursue it. C-14 testified that Constable Peter Huffey, the OPP officer who investigated the issue in 1991, told him that "he didn't think it was a criminal case; that this was a civil matter."

Detective Inspector Hall determined that C-14's complaint did not fall within Project Truth's mandate. He referred the matter to OPP Detective Inspector Bruce MacKinnon the day after receiving the complaint. Detective Constable John Ralko of the Long Sault Detachment was assigned to the case. After completing his investigation, Detective Constable Ralko informed C-14 that he did not have reasonable and probable grounds to lay charges.

In C-14's case, there was no connection to the Fantino Brief and the alleged abused was not a "prominent" person. Detective Inspector Hall referred the matter promptly and it was dealt with by a local OPP detachment. In my view, the mandate decision made in relation to C-14's complaint was correct.

Victims' Perspectives on Impact of Mandate Decisions

In addition to C-66, C-10, and C-97, a number of other complainants had to deal with both Project Truth and the CPS because the OPP determined that certain suspects were not within their mandate. These include Marcel Lalonde's victims, such as C-8, C-45, and his brother. Some of these victims had to deal with parallel investigations and prosecutions.

CPS Constable Desrosiers testified that it was stressful for victims to go through parallel prosecutions, but that he was not party to any discussions about how this stress could be reduced. He also said that he would not have necessarily been aware when one of the victims he was dealing with was testifying in an OPP matter. He would not know how their evidence was received or how well they held up in cross-examination.

One of the victims testified that he was confused about why his allegations were split between the two police forces. He blamed both forces for this. During direct examination, C-10 said:

[W]hy was Carl Allen a Cornwall matter and Malcolm MacDonald and the other guys, why was they a provincial matter? Why would the Cornwall police not deal with that? It was in Cornwall I was molested, and that has always been a question. It still is today ... they all happened in Cornwall, so it should have been dealt with by the Cornwall police. I don't understand why they weren't.

In cross-examination, C-10 also questioned why the OPP did not deal with his allegations against Mr. Allen.

Implications of an Ill-Defined Mandate

In my view, the cases described above clearly demonstrate that there was little common understanding of the scope of the Project Truth mandate and consequently considerable inconsistency in its application.

Initially, Project Truth investigated allegations with no connection to the Fantino Brief in order to prevent complainants from having to split their complaints between police agencies. However, this practice was not consistent. Decisions on mandate at times appear to have been made on an arbitrary and ad hoc basis; an allegation against a convenience store owner was taken on, but one against a teacher was not. Where it was determined that a complaint did not fall within the Project Truth mandate, referrals to other police agencies were not always made promptly.

Accordingly, I find that the OPP, and Detective Inspectors Smith and Hall, failed to clearly define the Project Truth mandate in a manner that would have provided appropriate direction and structure to the project.

It appears that the mandate for Project Truth was largely defined by the allegations uncovered by Constable Dunlop. The OPP failed to determine for itself the appropriate scope of the project. In my view, it may have been more effective for Project Truth to simply investigate all allegations of non-familial, historical sexual abuse involving young people in the Cornwall area, rather than attempting to determine whether a case fell within its mandate based on the position of the alleged perpetrator.

I understand that such an approach would have resulted in a significantly larger investigation, probably requiring more resources. That said, a broader mandate also would have had significant benefits. It would have provided a clear structure to the project, been less confusing for complainants, and allowed the investigating officers to examine possible linkages between all suspects. This last point is of particular importance given the allegations about conspiracies and “pedophile rings.” The conspiracy investigation and linkage analysis conducted by Project Truth are discussed in later sections of this chapter.

Interactions Between Project Truth and Constable Perry Dunlop

Project Truth began as a result of the investigative work conducted by Cornwall Police Service (CPS) Constable Perry Dunlop, his lawyer, Charles Bourgeois, and his brother-in-law, Carson Chisholm, which began in 1996. At that time, Constable Dunlop was on sick leave from his position with the CPS. During this time, the group interviewed a number of alleged victims and witnesses of sexual abuse. Some of the information gathered during this investigation was used to support Constable Dunlop’s multi-million-dollar civil action against the CPS, the Diocese of Alexandria-Cornwall, and others. Constable Dunlop’s private investigation, as well as some highlights of his background and his career with the CPS, is set out in the section on Perry Dunlop in Chapter 6, “Institutional Response of the Cornwall Community Police Service.”

As discussed in the previous sections, the Fantino Brief produced by Constable Dunlop formed the basis of the Project Truth mandate. The officers in charge of Project Truth, Detective Inspector Tim Smith and Detective Sergeant Pat Hall, had numerous contacts with Constable Dunlop. Many of those encounters involved attempts to obtain the Constable’s notes, statements, and other materials relating to his contacts with alleged victims of sexual abuse. Because Constable Dunlop was a police officer at the time of his private investigation, he had a duty to

disclose these materials. He also should have recorded these contacts and kept organized notes of his conversations with alleged victims.

In addition, issues arose as a result of comments made in the media by Constable Dunlop and his wife, Helen, as well as Constable Dunlop's continuing contacts with alleged victims and their families.

In January 2000, Constable Dunlop was given a written order to draft a comprehensive will-state about his contacts with victims and witnesses and to disclose all relevant materials in his possession. Mr. Dunlop did not complete his testimony at this Inquiry, an issue which I have explained in detail in Chapter 12, on process, but this will-state provides his perspective on events, albeit written several years after the fact and after numerous conflicts and difficulties had arisen. In this section, I will make some reference to this will-state, but I will also consider Constable Dunlop's sworn testimony at the various legal proceedings that arose as a result of the investigations into allegations of sexual abuse. I am mindful not only of the time gap between the writing of the will-state and the events described therein, but also of the fact that this document is not always consistent with his testimony under oath.

Initial Meeting Between Project Truth and Constable Perry Dunlop

On June 11, 1997, Detective Inspector Smith met with Constable Dunlop. Detective Inspector Smith explained that the purpose of the meeting was to "lay down some ground rules" with Constable Dunlop. Detective Inspector Smith testified that he wanted to thank the Constable for the Fantino Brief and ask him to refer any other complainants to Project Truth. He also wanted to ask Constable Dunlop "to give us a chance."

CPS Inspector Richard Trew also attended this meeting. Inspector Trew had been assigned to act as a liaison between the Ontario Provincial Police (OPP) and the CPS in matters relating to the Project Truth investigation. Inspector Trew testified that he had been assigned to this task partly because he was one of the few executive-level officers of the CPS who was not being sued by Constable Dunlop. Inspector Trew said very little during this meeting.

At the meeting, Detective Inspector Smith discussed a number of issues with Constable Dunlop. Detective Inspector Smith explained that he had the Fantino Brief and that all of the allegations in it would be investigated. Constable Dunlop was told that a team of investigators had been assigned, and that an outside Crown attorney was going to be in charge of the file.

According to Constable Dunlop's will-state, Detective Inspector Smith shared some information about matters loosely related to the case, such as the Varley shooting, the tapes seized at Ron Leroux's residence, and some of the allegations

against Malcolm MacDonald. In testimony, Detective Inspector Smith agreed that he talked to Constable Dunlop about these matters, but he disagreed with how Constable Dunlop interpreted his comments.

While Detective Inspector Smith was no doubt trying to befriend Constable Dunlop to try and persuade him to assist the OPP in its investigation, the amount of information he chose to share with Constable Dunlop is surprising. By 1997, Constable Dunlop was a very public figure who had spoken repeatedly to local, regional, and national media outlets concerning his own circumstances and those of others. In hindsight, Detective Inspector Smith's sharing of information loosely related to the Fantino Brief was not prudent. Some of the information that he shared with Constable Dunlop, such as the videotape seizure and destruction, predictably became public and led to more rumours and innuendo.

Detective Inspector Smith asked Constable Dunlop to refrain from speaking to the media and act professionally when in court. According to Detective Inspector Smith, Constable Dunlop had shown up in uniform at a preliminary hearing in the Father Charles MacDonald prosecution and made some derogatory comments toward Father MacDonald and his defence counsel. According to Inspector Trew's notes, Constable Dunlop agreed with these requests.

Detective Inspector Smith and Inspector Trew testified that Constable Dunlop was told during this meeting that in the future he was to refer victims to Project Truth. Detective Inspector Smith's notes indicate that Constable Dunlop was told that victims should not be interviewed by him, his lawyer, or his brother-in-law, Carson Chisholm. According to Constable Dunlop's will-state, Detective Inspector Smith told him, "I should advise my brother in law Carson Chisholm not to take anymore statements."

Constable Dunlop also noted in his will-state:

I distinctly remember at this meeting I inquired as to victims. More specifically sexual assault victims who come forward to me. What if they wish my presence at a statement they may give to police. Inspector Tim Smith indicated there was no problem with that.

The message was clear. Get the statement. That was the priority.

At the hearings, Detective Inspector Smith said that he told Constable Dunlop that if victims came forward who did not want to speak to Detective Inspector Smith, then Constable Dunlop could be present during the statement. Detective Inspector Smith testified that the message that he was trying to send was, "Get the person to come to us." Constable Dunlop's will-state confirms that "Smith wanted me to forward all further victims to him."

Detective Sergeant Hall did not attend the meeting but was later informed about what had transpired. He testified that he was aware that Constable Dunlop had been told that he could act as a “coach” or intermediary to bring victims to Project Truth.

It is clear that Constable Dunlop was being given mixed messages in this meeting about his role in the investigation. On one hand, he was told to refrain from taking statements from victims, but on the other hand, he was told that he could continue to be in contact with victims and that his role was to bring them in to Project Truth and, if necessary, to act as a coach for them.

Detective Inspector Smith did not ask Constable Dunlop to turn over any outstanding notes that he had. Detective Inspector Smith said that this request was made at a later meeting.

Detective Inspector Smith testified that “it was a good meeting” and that Constable Dunlop had indicated that he would cooperate “100 percent.”

August 7, 1997 Meeting Between Project Truth and Constable Perry Dunlop

Detective Inspector Smith met with Constable Dunlop again on August 7, 1997. Inspector Trew and Detective Sergeant Hall attended this meeting as well. These three officers all took notes and testified about what transpired. Unfortunately, Constable Dunlop’s will-state only says, “Meeting at H.Q. with Inspector Tim Smith, Detective Pat Hall and Inspector Trew. The meeting was about unauthorized release to the media.”

The meeting was held in part because David Silmsner had come to the OPP alleging that Constable Dunlop had told him there was a plot by Father MacDonald, Malcolm MacDonald, and Ken Seguin to kill Mr. Silmsner. At that time, Detective Sergeant Hall was investigating an allegation that these same three men had threatened to kill Constable Dunlop and his family. This investigation is discussed in a later section of this chapter.

Constable Dunlop denied having told Mr. Silmsner that there was a plot against Mr. Silmsner’s life. Detective Sergeant Hall asked Constable Dunlop to provide a statement. According to Detective Sergeant Hall, Constable Dunlop became agitated by this request. Detective Inspector Smith intervened and suggested that Constable Dunlop speak with Mr. Silmsner “and straighten it out and get back to us.” Detective Sergeant Hall testified that Constable Dunlop later told him that he had cleared the matter up with Mr. Silmsner but that he did not provide any notes about this contact.

The second purpose for the meeting was to discuss comments that Constable Dunlop had made in the press. An article had appeared in the *Ottawa Sun* several

days earlier that referred to the death threats against the Dunlop family, Constable Dunlop's lawsuit, and some of the other allegations made in the Fantino Brief. Both Constable Dunlop and his wife were quoted in this article.

Detective Sergeant Hall testified that he and Detective Inspector Smith were concerned that Constable Dunlop's comments could lead perpetrators to destroy evidence. Further, the comments could discourage complainants from coming forward, as they might be concerned that if they did, their information could end up in the media. Inspector Trew's notes simply say, "Constable Dunlop was strongly advised not to comment on any criminal cases that Insp. Smith and his team are working on because this could possibly jeopardise these cases."

According to Detective Inspector Smith's notes, Constable Dunlop explained that the media had caught him off-guard, and he agreed to refrain from speaking to the press in the future.

The *Ottawa Sun* article also mentioned that numerous victims were coming forward to the Dunlops. Detective Inspector Smith and Detective Sergeant Hall asked Constable Dunlop to provide the names of the witnesses whom he had spoken to, as well as any statements or notes that he had, by August 15, 1997. He was told to give these items directly to Detective Sergeant Hall, who had been designated as the OPP officer responsible for liaising with Constable Dunlop. Detective Inspector Smith said in testimony at this Inquiry that Constable Dunlop should have known about his disclosure obligations as a police officer, "but I was just going to tell him anyway."

Constable Dunlop's will-state says that he had several contacts with alleged victims as recently as two weeks before this meeting, and that he referred these individuals to Project Truth.

Detective Inspector Smith testified that in this meeting, Constable Dunlop was again given the message that he could be present during statements taken by the OPP, if that was the only way to get a particular victim to come forward. Inspector Trew also testified that Constable Dunlop was told that he could be used as a "coach" to get a victim to come forward, but that he could not be actively involved in the case. Inspector Trew's notes indicate, "I also made it very clear that Constable Dunlop could not be involved with taking statements."

Constable Dunlop was again being given mixed messages about contacts with alleged victims. In addition, at this meeting Constable Dunlop was explicitly directed to speak to an alleged victim, Mr. Silmsen, about allegations that he had made to the police. Constable Dunlop was not clearly told in these first two meetings to keep track of his contacts with victims or to inform the OPP immediately when he had been contacted by a victim.

After the meeting, Inspector Trew issued a memo to Constable Dunlop that stated:

Media releases by unauthorized persons could possibly jeopardize the ongoing investigation by the Ontario Provincial Police into the allegation of sexual assault.

Therefore, unless authorized by the Chief of Police and within the guidelines of Directive #59, no members of the Cornwall Police Service will release information to the media.

According to Inspector Trew, this memo was an order.

Detective Sergeant Pat Hall Obtains Additional Names From Constable Perry Dunlop

On August 15, 1997, Detective Sergeant Hall went to Constable Dunlop's residence to obtain the items he had promised to disclose at their meeting the previous week. Constable Dunlop provided a list of people that the OPP should speak to as potential victims or witnesses of sexual abuse. Only the initials of some people were provided, and Constable Dunlop told Detective Sergeant Hall that he wanted to contact these individuals first because some of them had given their names in confidence. Detective Inspector Hall testified that he gave Constable Dunlop time to do this.

Constable Dunlop did not have copies of his notes available, but he said that he would provide them when he returned from vacation in two weeks. Detective Inspector Hall testified that Constable Dunlop seemed cooperative at this encounter.

Constable Perry Dunlop Won't Give Detective Sergeant Pat Hall Notes Upon Advice From His Lawyer

Detective Sergeant Hall contacted Constable Dunlop on September 23, 1997, to obtain the notes that Constable Dunlop had agreed to provide. Detective Sergeant Hall's notes state that Constable Dunlop said that his lawyer had advised him not to provide the notes due to his ongoing lawsuit against the Cornwall Police Service, the Diocese, and others. Constable Dunlop told Detective Sergeant Hall to call his lawyer to discuss the matter. According to Constable Dunlop's will-state, "I was unsure as to what I was required to hand over to Police. I knew there was a lawyer client privilege, and felt that my counsel should be contacted."

Detective Inspector Hall testified that he advised Detective Inspector Smith of the difficulty that he was having in obtaining Constable Dunlop's notes. Detective Inspector Smith called CPS Inspector Trew and informed him of Detective Sergeant Hall's conversation with Constable Dunlop.

Detective Inspector Hall explained at this Inquiry why the OPP had to seek the assistance of the CPS to obtain disclosure from Constable Dunlop:

He [Perry Dunlop] was a Cornwall police officer. We had no control over him whatsoever, so I don't think we really had to ask. I mean, I think Inspector Trew determined, from the information we were not receiving, that they had to do something.

Inspector Trew issued a written order to Constable Dunlop, dated September 25, 1997. The order reminded Constable Dunlop that he had a statutory duty as a police officer to disclose information about victims or alleged sexual assaults. It also said that notwithstanding the fact that the materials were with Constable Dunlop's lawyer, he was to "disclose to Inspector Tim Smith, or his investigator, all your notes, tapes, statements, etc. that you have made or received" by October 3, 1997.

Inspector Trew met with Constable Dunlop on September 26, 1997, and gave him a copy of the order. According to Inspector Trew's notes, Constable Dunlop commented, "[T]hat's fine."

It is my view that the OPP acted appropriately by informing their contact at the CPS of the difficulties obtaining compliance from Constable Dunlop and that Inspector Trew took appropriate action by issuing a direct written order to Constable Dunlop.

On October 3, 1997, Constable Dunlop called Inspector Trew from Toronto, where he was meeting with his lawyer. The purpose of the call was to request an extension of the deadline for disclosure. Inspector Trew agreed to the extension as long as the material was provided as soon as possible, and he told Constable Dunlop that he would require a written report explaining the delay.

On October 6, 1997, Inspector Trew spoke to Constable Dunlop's lawyer, Charles Bourgeois. According to Inspector Trew's notes, Mr. Bourgeois said that Constable Dunlop was at his firm reviewing materials to see if there was anything that was not already given to the OPP. Mr. Bourgeois said that he had already turned over a brief to the OPP. Inspector Trew told Mr. Bourgeois that Constable Dunlop was a police officer and should have been taking notes when he had interviews with victims or witnesses. Mr. Bourgeois further stated that some of Constable Dunlop's notes might be subject to solicitor-client privilege. Inspector Trew responded that notes made by police officers concerning criminal offences have to be disclosed to proper authorities. Inspector Trew requested that Mr. Bourgeois provide something in writing stating that Constable Dunlop was attempting to comply with his disclosure obligations. At this Inquiry, Mr. Bourgeois testified that he had no recollection of this conversation.

Mr. Bourgeois sent Inspector Trew a letter on October 8, 1997, stating that Constable Dunlop was reviewing his materials in order to comply with the order, and that Constable Dunlop would provide the materials to the OPP by October 10, 1997, “except for materials previously provided to the O.P.P. or any materials that fall under the solicitor-client privilege.”

Mr. Bourgeois testified that he did not recall writing this letter but he acknowledged that it bore his signature. He said at the hearings that he assumed that the materials that fell under solicitor-client privilege were his own handwritten notes, although he did not recall the advice that he gave to Constable Dunlop on the matter, nor did he remember assisting his client in identifying the documents that were to be disclosed. Mr. Bourgeois did not recall whether he told Constable Dunlop that he did not have to disclose personal notes taken during his interviews with various people.

Inspector Trew kept Detective Sergeant Hall apprised of his discussions with Mr. Bourgeois, and Detective Sergeant Hall in turn informed Detective Inspector Smith.

A decision was made to have Constable Dunlop give his materials directly to the OPP, in part to ensure continuity of possession and in part because the CPS was under investigation by the OPP. Inspector Trew did not want the CPS to be accused of having tampered with the materials.

Constable Dunlop Discloses Yellow Binder and Additional Materials

Constable Dunlop met with Detective Sergeant Hall on October 10, 1997, and turned over a yellow binder with nine tabs of materials, as well as three audio-cassette tapes that contained interviews with Ron Leroux, Robert Renshaw, and Gerald Renshaw.

The binder contained the index to the Fantino Brief, a variety of handwritten notes from contacts from a number of individuals, including alleged victims, and various lists, including a list of alleged pedophiles, and lists of possible victims or witnesses.

Some of the materials in the binder mentioned Marcel Lalonde, and there were notes from conversations with C-8, an alleged victim of Mr. Lalonde, about matters not directly related to Mr. Lalonde. Although the Lalonde case was a joint CPS and OPP investigation and not a Project Truth matter, OPP Detective Constable Don Genier was responsible for disclosure in the Marcel Lalonde prosecution. As was discussed in the Marcel Lalonde section earlier in this chapter, some of the materials in Project Truth’s possession, including the materials in the yellow binder, were not turned over to the Crown for two years, until the fall of 1999.

Detective Sergeant Hall was aware at the time that there were materials that were not disclosed at this time because Constable Dunlop and his counsel claimed that they were subject to solicitor-client privilege.

I accept that Constable Dunlop was acting upon his understanding of the legal advice of his lawyer, Charles Bourgeois. This said, I have two comments to make about this privilege claim.

The first is that many of the items in Constable Dunlop's or his lawyer's possession were wrongly classified as being subject to a solicitor-client privilege claim. This mistake may have stemmed from the very nature of Constable Dunlop's civil lawsuit against the CPS, the Diocese, and others. The amended statement of claim, which was later struck with leave to amend, was improperly framed to include allegations of abuse perpetrated by a "clan" of pedophiles. These allegations were only tenuously related to the harm suffered by Constable Dunlop. However, because the amended statement of claim referred to sexual abuse committed against others, either Constable Dunlop or his lawyer may have believed that the statements and notes relating to these alleged victims were properly subject to solicitor-client privilege or even litigation privilege. It is unfortunate that once the amended statement of claim was modified to remove these unrelated allegations, no one reassessed the privilege claim that was being asserted over the notes.

Second, I find that the OPP failed to properly react to the assertion of the privilege claim. There were a number of possible responses. If the OPP was uncertain whether a claim of solicitor-client privilege superseded a police officer's duty to disclose, it should have sought legal advice. It may even have been helpful to have a lawyer contact Mr. Bourgeois to discuss the state of the law surrounding this issue and possibly reach a mutually acceptable solution.

Furthermore, no attempt was made to determine the nature of the documents that were being withheld. Detective Sergeant Hall did not request a detailed list of documents for which privilege was claimed. It is a common practice in civil litigation to require a party to provide a detailed list that describes privileged documents without disclosing the privileged information. Although Detective Sergeant Hall may not have been aware of this, a lawyer would have been able to give him this information. Thereafter, asking for such a list would not have been an unduly burdensome request.

C-18 Tells OPP That He Wasn't Abused

A few weeks later, Detective Constable Genier interviewed C-18. The Fantino Brief contained a statement from C-18 alleging that he had been abused by a priest. On October 22, 1997, Detective Constable Genier spoke with C-18, who

said that he was never abused, although he recalled “advances made by a priest.” According to Detective Constable Genier’s notes in the case management register:

Dunlop contacted him [C-18] and showed him several photos and wanted him to disclose abuse. Dunlop stated—you can make money ...

[C-18] told Dunlop who he knew and said he chose not to pursue it. Dunlop stated he put together a statement for [C-18] and later would have him sign it. [C-18] later did sign it because he felt it wasn’t going anywhere. [C-18] stated that Dunlop “sweetened it up a bit.”

Detective Inspector Hall testified that the fact that C-18 changed his story in his interview with the OPP was troubling to the Project Truth team. He said that they tried to pursue the matter with C-18, but he refused to cooperate any further.

This interview provided an early indication to Project Truth that Constable Dunlop might have utilized improper techniques during his private investigation that may have unduly influenced witnesses. This should have alerted the officers to the need to be aware of and track Constable Dunlop’s contact with victims and witnesses, so that they could address any possible contamination of their cases.

Further, it is my view that they should have raised the matter with Constable Dunlop, both to hear his side of the story and to obtain any notes that he had in relation to his contact with C-18.

Constable Perry Dunlop Fires Lawyer Charles Bourgeois

In a letter dated November 21, 1997, Constable Dunlop terminated the services of Mr. Bourgeois as his lawyer. At this Inquiry, I stated that the reasons for the end of this relationship are subject to solicitor-client privilege.

Mr. Bourgeois testified that he assumed that at the end of the retainer, he would have returned all of Constable Dunlop’s materials to him.

A few days later, on November 24, 1997, the Cornwall Police Service brought a motion to strike Constable Dunlop’s statement of claim. Mr. Bourgeois did not attend the motion, and Constable Dunlop asked for an adjournment in order to seek new legal counsel. The judge allowed the motion to strike, but granted leave to amend the statement of claim and re-file it by February 2, 1998. Constable Dunlop retained new counsel, and the Court permitted him to file an amended claim that did not include all of the allegations regarding the “clan of pedophiles.” According to Staff Sergeant Garry Derochie’s notes, Constable Dunlop eventually settled his lawsuit in December 2002 for \$40,000.

Constable Perry Dunlop's Contact With Project Truth Victims

During the first year of the Project Truth investigation, Constable Dunlop had contact with a number of Project Truth victims and their families. By July 1998, the officers were aware that Constable Dunlop had been in contact with C-10, C-16's mother, and possibly others.

They also would have been aware that Constable Dunlop had been in contact with alleged victims prior to Project Truth, based on the statements in the Fantino Brief and the notes in the yellow binder. Constable Dunlop claimed in his will-state that he referred many of these people to Project Truth.

Constable Dunlop had also had contact with other alleged victims, most notably C-2, but Project Truth was unaware of these contacts.

All of these contacts are described in more detail in the relevant investigation sections.

July 23, 1998, Meeting Between Project Truth and Constable Perry Dunlop

On July 23, 1998, Detective Inspector Smith, Detective Sergeant Hall, and Inspector Trew had another meeting with Constable Dunlop. Constable Dunlop's will-state contains a detailed description of this meeting. Detective Inspector Hall testified that he thought Constable Dunlop had tape-recorded the meeting.

One of the purposes of the meeting was to discuss Constable Dunlop's contact with victims, including his recent contact with C-16's mother. Detective Inspector Hall testified there was some discussion about the extent of the contact and the reasons for it. According to Detective Inspector Smith, Constable Dunlop explained that C-16's mother had initially contacted him, but Detective Inspector Smith was concerned by the fact that Constable Dunlop later called her back.

Neither Detective Sergeant Hall nor Detective Inspector Smith made notes of the fact that they had raised the issue of Constable Dunlop's contact with C-16's mother during this meeting. This became an issue during the trial of Jacques Leduc, and will be discussed in more detail in that section.

It would have been prudent for the Project Truth officers to have reminded Constable Dunlop that his duty of disclosure was ongoing, and thus he had a duty to disclose notes of the contacts that he had with victims after Project Truth began. I cannot see how these notes would be subject to solicitor-client privilege, given that they were not tied to his civil action.

The second major purpose of the meeting was to discuss disclosure, particularly in light of comments that Helen Dunlop had recently made in the media.

As discussed in the section “External Pressures: The Media, Websites, and Garry Guzzo,” shortly after a number of suspects were arrested on July 9, 1998, Helen Dunlop told the *Ottawa Sun* that none of the men arrested were named in the materials that she and her husband had turned over to the OPP, and that at least ten more people could be added to the list of those charged. Indeed, none of the suspects arrested that day were accused in statements in the Fantino Brief.

According to Constable Dunlop’s will-state, Ms Dunlop also said in the media, “Every parent should be knocking down the O.P.P.’s door demanding to know who these pedophiles are.” Detective Inspector Smith told Constable Dunlop that these comments could undermine the confidence of victims in the investigation and that they would not come forward if such comments continued.

Detective Inspector Smith asked Constable Dunlop to speak to his wife about this, but Constable Dunlop said, according to Detective Inspector Smith’s notes, that his wife does what she wants.

Inspector Trew testified that Helen Dunlop, in speaking to the media, had referred to affidavits that the OPP did not have. Detective Inspector Hall also testified that Ms Dunlop told the press that boxes of material had been delivered to the Ministry of the Attorney General and the “Top Cop.” Detective Sergeant Hall wanted to know what Ms Dunlop was talking about, as the Project Truth investigators had only received one binder (the Fantino Brief) and the letter that Constable Dunlop had written to the Solicitor General, dated April 7, 1997.

Constable Dunlop was surprised by this. He explained that he had delivered four volumes of evidence to the Ministry of the Attorney General and the Ontario Civilian Commission on Police Services (OCCPS) on April 8, 1997, and that he had attempted to deliver the same materials to the Solicitor General’s Office, but it refused to accept the binders. Detective Inspector Smith testified that he was not aware of these additional materials at the time. I refer to these materials throughout this Report as the “Government Brief.”

Constable Dunlop agreed to photocopy these materials and provide them to Project Truth. According to Detective Sergeant Hall’s notes, he also asked Constable Dunlop to provide him with a memo confirming that the OPP had all of his materials.

Delivery of the Government Brief to Project Truth

On July 31, 1998, Constable Dunlop met with Inspector Trew and advised him that the materials that he had promised to provide to Project Truth were ready. According to Inspector Trew’s notes, Constable Dunlop said that he would not write a letter stating he had handed over all his materials, but that he would sign a letter to this effect written by Project Truth, as long as his lawyer could review the letter first.

Later that day, Detective Sergeant Hall met with Constable Dunlop, who provided him with the following:

- two black binders, Volumes 1 and 2;
- 2 plastic-bound binders, Volumes 3 and 4;
- copy of memo to Chief Julian Fantino, London Police Service;
- copy of memo to Solicitor General Robert Runciman, and Mr. Runciman's reply;
- copy of reply from regional Crown Attorney Peter Griffiths; and
- copy of receipt of material from the OCCPS, the Ministry of the Attorney General, and the Ministry of the Solicitor General.

Constable Dunlop had Detective Sergeant Hall sign a receipt saying:

Received from Constable Perry Dunlop of the Cornwall Police Service—

Four Volumes of documents marked "Submission by Constable P. Dunlop, of The Cornwall Police Service."

The Ontario Provincial Police "Project Truth Investigators" never received the full package that was delivered to the Office of the Attorney General, or the Office of the Solicitor General, Ontario Civilian Commission on Policing Services that was hand delivered on the 8th of April 1997 to the said offices by Constable Perry Dunlop.

The first two binders contained eighty-five tabs of material. The first seventy-four tabs were identical to the Fantino Brief, and the remaining eleven tabs consisted of new material. Volumes 3 and 4 contained material from the *Police Services Act* charges against Constable Dunlop. This material had not been given to Chief Fantino.

Detective Inspector Hall testified that only three items were useful to him from the eleven tabs of new material in the first two binders. These were a statement from C-8, taken in January 1997, an affidavit from Robert Renshaw, and a statement from C-130.

However, Detective Inspector Hall added that by July 1998, he already had these items in his possession. He testified that the rest of the new material in Volumes 1 and 2 "wasn't overly helpful for investigative purposes." It included a pamphlet on reporting child abuse, Constable Dunlop's resumé, news clippings, and a statement of claim from a victim of whom Project Truth was already aware.

Detective Inspector Hall testified that Volumes 3 and 4 consisted of materials that were disclosed during the *Police Services Act* prosecution against Constable Dunlop after he gave David Silmser's statement to the Children's Aid Society. They contained interview reports from various Cornwall Police Service officers, extensive notes from CPS Staff Sergeant Garry Derochie, and other investigative material compiled by CPS Staff Sergeant Brendon Wells. Detective Sergeant Hall did not already have this material, and he said at the hearings that it was useful for his conspiracy investigation.

Notwithstanding the usefulness of the material, Detective Inspector Hall stated at the hearings that the failure of the Ministry of the Attorney General to deliver the material to him did not affect his investigation in any way.

In his will-state, Constable Dunlop wrote:

I think I realized why on September 23rd 1997 Detective Sergeant Pat Hall was upset at me for not handing materials over before my counsel was contacted. Detective Sergeant Pat Hall had not been provided with all the material. It was now clear at this meeting. The Attorney General's Office as well as the Solicitor General's Office, did not forward the material to the assigned investigators the OPP.

It is my view that Constable Dunlop is mistaken in this comment. He had other relevant materials in his possession that were not included in the Government Brief, nor in the yellow binder that he provided in October 1997. As I have previously mentioned, Constable Dunlop may have wrongly been under the impression that some of these materials were protected by solicitor-client privilege. In addition, he had been in contact with alleged victims since the fall of 1997, and he was obligated to disclose the notes of these contacts by the duty of ongoing disclosure and by Inspector Trew's written order of September 25, 1997.

Although OCCPS informed Project Truth in 1999 that it had the materials that had been delivered in April 1997, the Ministry of the Attorney General was never able to find its copy of them. In the years that followed, Detective Inspector Hall made several requests to Ministry officials, asking them to determine what had happened to the materials. Detective Inspector Hall testified that he never received a satisfactory answer. This issue is discussed in detail in Chapter 11, on the institutional response of the Ministry.

After reviewing the materials, Detective Sergeant Hall informed Ms Dunlop that the binders did not contain any significant new material. Detective Sergeant Hall also wrote to Crown Attorney Robert Pelletier and provided him with material from the binders that had to be disclosed to defence counsel in the Father Charles MacDonald prosecution.

OPP Request for an Investigation of Constable Perry Dunlop

Detective Inspector Hall testified that at some point in July or August 1998, he and Detective Inspector Smith spoke with Inspector Trew and requested that the CPS conduct an investigation of Constable Dunlop. According to Detective Inspector Hall, the CPS asked the OPP to make this request in writing. Detective Sergeant Hall consulted with OPP Headquarters and it was determined that they should not make a written request for an investigation, as it could be perceived that the OPP was investigating Constable Dunlop.

Constable Perry Dunlop Refuses to Sign Memo on Disclosure

On August 11, 1998, Detective Sergeant Hall met with Constable Dunlop at his home and presented him with a letter to sign confirming that he had disclosed all of his materials. The letter said:

I, PERRY DUNLOP, have provided to the Ontario Provincial Police, Project Truth, copies of all notes, audio/video tapes and interview statements, pertaining to both *criminal and civil matters* that are in my possession. (Emphasis added)

Constable Dunlop said that he had a problem with the reference to “civil matters” and said he wanted to obtain legal advice before signing the letter. I agree that Constable Dunlop was justified in refusing to sign a document that made reference to his civil matters and in seeking legal advice on this issue.

Detective Sergeant Hall spoke with Helen Dunlop on August 27, 1998. She asked if her husband had signed the disclosure letter. Detective Inspector Hall testified that he found this odd, and that he concluded that she and her husband had a difference of opinion about signing the letter. Ms Dunlop told him that their lawyer had told Constable Dunlop not to sign because of their ongoing civil action. She also said that Constable Dunlop might have another tape of Ron Leroux to disclose.

On September 17, 1998, Detective Sergeant Hall met with Constable Dunlop again and gave him another memo to sign. This memo did not make reference to Constable Dunlop’s civil matters. According to Detective Sergeant Hall, Constable Dunlop told him that although he agreed with the memo, he wanted to show it to his lawyer before signing. He also told Detective Sergeant Hall about the video of Mr. Leroux reading a statement and said that he would provide a copy. The tape had been made in December 1996.

Constable Dunlop contacted Detective Sergeant Hall on October 1, 1998, at 3:15 p.m. and told him that he had a copy of the Ron Leroux videotape ready.

According to Detective Sergeant Hall, he asked Constable Dunlop if he would sign the memo confirming that he had disclosed all his materials, and Constable Dunlop said “absolutely.”

Detective Sergeant Hall met with Constable Dunlop half an hour later. Constable Dunlop provided the tape of Mr. Leroux’s statement but refused to sign the memo. He wrote “advised not to sign” at the bottom of this document. During court proceedings in the Father MacDonald prosecution, Constable Dunlop testified, “I was advised not to sign by my lawyer.”

The following day, Detective Sergeant Hall contacted Inspector Trew to advise him that Constable Dunlop did not sign the letter confirming he had supplied all relevant materials pertaining to Project Truth. Inspector Trew testified that he did not believe that he took this up with Constable Dunlop.

Detective Inspector Hall testified that Constable Dunlop’s refusal to sign the letter caused him to conclude that Constable Dunlop still had relevant materials in his possession.

Detective Inspector Hall added that he knew that Constable Dunlop had not provided all his notes after he reviewed the videotape provided by Constable Dunlop. The tape showed Constable Dunlop presenting Ron Leroux with a photo line-up. Constable Dunlop appeared to be taking notes in the video. However, Constable Dunlop had not provided Project Truth with a copy of these notes.

Constable Perry Dunlop’s Call to Claude Marleau

In the fall of 1998, the question of contacts between Claude Marleau and Constable Dunlop was raised by the defence in the prosecution of an alleged abuser of Mr. Marleau.

Around 10:00 a.m. on November 16, 1998, Detective Sergeant Hall attempted to call Constable Dunlop at home and spoke with his wife, Helen. Ms Dunlop said her husband was sleeping, having just finished a night shift. Detective Sergeant Hall asked if she had any notes about her interactions with Mr. Marleau. She said that there was a letter dated October 3, 1997. Detective Sergeant Hall asked her to check with her husband and determine whether there were any other notes.

Ms Dunlop testified that she did not remember talking to the OPP about Mr. Marleau and she did not know why they would be asking her about him. She said that the only dealings she had with him was sending him one letter and one package. This is described further in the section “Investigations of Complaints of Claude Marleau and C-96.”

Detective Sergeant Hall then asked Detective Constable Joe Dupuis to contact Mr. Marleau. Detective Constable Dupuis was told by Mr. Marleau that he had just spoken with Constable Dunlop, and that Constable Dunlop had asked Mr. Marleau to fax him the materials requested by the OPP.

Detective Sergeant Hall called the Dunlop residence again just after 10:30 a.m. He spoke with Constable Dunlop and asked why he was contacting Mr. Marleau. According to Detective Sergeant Hall's notes:

He [Constable Dunlop] really didn't have any explanation for contacting MARLEAU, and he went on to say he felt comfortable getting on the stand and repeated, put me in the stand, meaning the witness box. I replied it may never get to that if we can't satisfy disclosure issues. I said you are a police officer, you know we have to disclose everything. I said we are trying to cover his ass as well. He took exception to that.

Detective Sergeant Hall then asked about the notes that were taken during the videotaped interview of Mr. Leroux. Detective Sergeant Hall's notes state, "He [Constable Dunlop] became agitated saying he will take the stand on that matter. He further stated, don't call me anymore, call my lawyer." Constable Dunlop then provided the name and contact information for his lawyer, John Morris.

Constable Dunlop did not note this incident in his will-state, but he does have notes of it, although they appear to be wrongly dated December 16, 1998. These notes confirm that Detective Sergeant Hall asked Constable Dunlop why he was contacting Mr. Marleau and that he asked about the notes that were taken during the interview with Mr. Leroux. Constable Dunlop described Detective Sergeant Hall's manner as "terse, unprofessional, edgy."

At the hearings, Detective Inspector Hall said, "[I]n hindsight maybe I shouldn't have said it was covering his ass but we're talking police officer to police officer here and I'm trying to enforce what I need to get from him."

Detective Inspector Hall testified that after this conversation, he immediately contacted Inspector Trew and informed him of what had transpired. Chief Anthony Repa acknowledged that the Cornwall Police Service was briefed on the fact that Detective Sergeant Hall was not convinced that Constable Dunlop had provided all of his disclosure.

Detective Sergeant Hall also wrote to Crown Attorney Alain Godin on November 17, 1998, and informed him of the difficulties in obtaining disclosure from Constable Dunlop. Detective Inspector Hall testified that he did not recall getting a response to this letter, nor did he recall getting any direction from Mr. Godin.

Detective Inspector Hall also testified that he had a discussion with Shelley Hallett about Constable Dunlop's notes and that he did not get much direction back from her.

Detective Inspector Hall testified that events in the fall of 1998, in particular Constable Dunlop's refusal to sign the memo and the conversation about his contacts with Mr. Marleau, caused his relationship with Constable Dunlop to

change for the worse. In addition, he acknowledged that the Dunlops were not happy with the December 1998 decision not to lay charges in relation to the death threats against the Dunlop family and that this “probably had an effect on my relationship with them.”

Despite the fact that Detective Sergeant Hall did not believe he had all of Constable Dunlop’s materials, it does not appear that any significant action was taken until disclosure issues arose in the Marcel Lalonde prosecution in the fall of 1999. It is my view that the OPP should have considered asking the CPS to issue another order to Constable Dunlop or requested a formal legal opinion about what action could be taken. Neither the OPP as an institution, nor its case managers for Project Truth, Detective Inspector Smith and later Detective Inspector Hall, were able to develop and apply proper practices or protocols to ensure effective cooperation with the CPS in dealing with Constable Dunlop’s involvement in OPP investigations and prosecutions.

Contact With Victims in 1999

The OPP was aware that Constable Dunlop was continuing to have contacts with victims into 1999. He met with C-104 on April 7, 1999, and took a videotaped statement from him. The OPP interviewed C-104 the following day, and he disclosed this contact with Constable Dunlop.

Staff Sergeant Garry Derochie Becomes the CPS Liaison Officer

In September 1999, Inspector Trew retired and Staff Sergeant Derochie became the Cornwall Police Service’s liaison with Project Truth. Staff Sergeant Derochie testified that he was assigned to this role because he was in the Professional Standards Branch and because he was involved in a number of issues regarding Constable Dunlop.

Issues Arising in the Marcel Lalonde Trial

As was discussed in detail in the section “Investigation and Prosecution of Marcel Lalonde,” a number of issues involving Constable Dunlop arose during the prosecution of Marcel Lalonde. Constable Dunlop had had contact with a number of victims and alleged victims of Mr. Lalonde, including C-8 and C-68.

Constable Dunlop testified in the preliminary inquiry on January 15, 1998. He told the Court that he still had some undisclosed materials in his possession that related to the Lalonde prosecution, and that Detective Constable Genier “would have everything [Perry Dunlop] provided to the OPP.”

The trial of Mr. Lalonde was initially scheduled to begin on October 4, 1999. On September 29, 1999, Crown Claudette Wilhelm received a letter from defence counsel requesting notes taken by Perry Dunlop on September 11 and December

12, 1996. These notes were in the package of materials that Perry Dunlop had delivered to Project Truth in a yellow binder in October 1997. As these notes were in the OPP's possession, responsibility for the delay in disclosing them lies with OPP and not with Constable Dunlop or the CPS.

However, on October 1, 1999, Constable Dunlop disclosed a handwritten note dated November 19, 1996, in which C-8 described the alleged abuse by Mr. Lalonde. This note was not in the Fantino Brief, the Government Brief, or the yellow binder. This note is one of several documents that Constable Dunlop failed to disclose to the police in a timely manner, despite a written order from the CPS in the fall of 1997.

The note is also significant because Constable Dunlop had testified at the preliminary inquiry that between June 1996 and January 1997, C-8 did not disclose the details of his alleged abuse by Marcel Lalonde. He had also promised at the preliminary inquiry to provide all of his notes that related to C-8's allegations about Mr. Lalonde.

The trial was subsequently adjourned to September 11, 2000, due to this late disclosure, but also because of the CPS's failure to locate and disclose a file of a previous investigation into Marcel Lalonde.

Crown Wilhelm had serious concerns that Constable Dunlop had not disclosed all of his materials. She expressed these concerns to CPS Acting Inspector Rick Carter and Staff Sergeant Derochie on October 4, 1999, and to Detective Inspector Hall in a letter dated October 5, 1999. She noted in this letter that the defence claimed that Constable Dunlop had contact with other alleged victims of Marcel Lalonde. She asked Detective Inspector Hall to obtain any additional notes from Constable Dunlop that he might have about these contacts and to ask him to refrain from speaking to victims.

On October 6, 1999, Detective Inspector Hall met with Staff Sergeant Derochie and Acting Inspector Carter. They discussed the possibility of obtaining a search warrant for Constable Dunlop's materials, but Detective Inspector Hall did not feel there were sufficient grounds for a warrant. They also discussed a possible investigation into Constable Dunlop for obstruction of justice or perjury. Detective Inspector Hall testified that it was the CPS officers' idea to investigate Constable Dunlop, although Staff Sergeant Derochie testified that Detective Inspector Hall encouraged him to investigate these issues. Detective Inspector Hall said that he did have the authority to investigate Constable Dunlop, although he did not object to the CPS doing so.

Detective Inspector Hall spoke with OPP Detective Superintendent Larry Edgar the following day, who instructed him not to interview Constable Dunlop.

Detective Inspector Hall then met with Marc Garson, Director of Crown Operations, Western Region, on October 13, 1999. Staff Sergeant Derochie had requested the meeting but was unable to attend. Mr. Garson was of the opinion

that if an investigation into Constable Dunlop was to be conducted, it should not be done by the CPS or by the OPP, but rather by an outside agency. Detective Inspector Hall's notes state that the following conclusions were reached at this meeting:

1. I am not investigating Dunlop nor do I intend to.
2. If an investigation, someone other than C.P.S. should do it.
3. It is my opinion that Cornwall P.S. want Dunlop investigated.

Detective Inspector Hall contacted Staff Sergeant Derochie a few days later and told him that he would not be investigating Constable Dunlop. He wrote to Crown Wilhelm on October 28, 1999, and told her that he would not speak with Constable Dunlop about his contacts with victims or about his disclosure, as she had requested.

Mr. Garson also met with Staff Sergeant Derochie and then gave him a legal opinion outlining the CPS's disclosure obligations and the Crown's responsibilities, and providing advice on what action should be taken.

Detective Inspector Hall met with Staff Sergeant Derochie on November 25, 1999. Staff Sergeant Derochie told him that Mr. Garson had recommended that Constable Dunlop be re-interviewed about disclosure. Staff Sergeant Derochie told Detective Inspector Hall that the Cornwall Chief of Police would be asking for an outside agency to conduct an investigation into the allegations that Constable Dunlop had committed perjury or obstructed justice in the Lalonde case. Finally, Staff Sergeant Derochie advised Detective Inspector Hall that he would issue an order to Constable Dunlop requiring him to produce all his materials and to cease communicating with victims.

CPS Issues Comprehensive Order to Constable Perry Dunlop

On January 10, 2000, Staff Sergeant Derochie provided Constable Dunlop with a comprehensive order requiring him to disclose all materials in his possession related to the Marcel Lalonde matter or to allegations of sexual abuse being investigated by the OPP or the CPS.³⁴ In addition, the order required Constable Dunlop to provide a comprehensive will-state, outlining all of his contacts with alleged victims or witnesses in all of these cases. He was further ordered not to communicate with the media and to cease and desist from investigating any criminal activity that might be the subject of the Project Truth investigation. He was to refer other victims who came forward to him to Project Truth.

34. The full text of the order is set out in Chapter 6, "Institutional Response of the Cornwall Community Police Service."

Detective Inspector Hall testified that he was not asked for input into the order and that he did not review it before it was given to Constable Dunlop. The order was drafted by Staff Sergeant Derochie, in consultation with Crowns Claudette Wilhelm and Marc Garson, and CPS counsel.

Constable Dunlop asked to have time to consult with a lawyer about the order. Staff Sergeant Derochie agreed, and Constable Dunlop signed the order on January 17, 2000. Constable Dunlop was taken off uniform patrol duties and was assigned to work on his will-state full-time until it was completed.

At this Inquiry, Detective Inspectors Hall and Smith took the position that they had no authority over Constable Dunlop and that it was up to the Cornwall Police Service to ensure that its officer provided disclosure. CPS Chief Anthony Repa agreed that the OPP had no power over Constable Dunlop and that any measures to make Constable Dunlop comply had to be done in conjunction with the CPS.

I am of the view that Detective Inspectors Smith and Hall should have insisted that the CPS have Constable Dunlop comply with his disclosure obligations much sooner than the fall of 1999. At the latest, this should have happened in October 1998, when Constable Dunlop refused to sign the memo acknowledging that he had disclosed everything in his possession. Detective Inspector Hall advised Inspector Trew of the refusal, but it does not appear to me that anyone followed up with Constable Dunlop after relations broke down in November 1998, until the issue surfaced in the Marcel Lalonde prosecution in October 1999. Detective Inspector Hall testified that if Constable Dunlop had been given the order sooner, the trial of Father Charles MacDonald might not have been delayed in May 2000.

Disclosure of Contact With C-2

On January 17, 2000, Constable Dunlop contacted Detective Inspector Hall and advised him that almost two years ago he had spoken to C-2, an alleged victim of Father MacDonald. C-2 had contacted the Cornwall Police Service on February 12, 1998, and spoken to Constable Dunlop. The Constable had met with C-2 on February 16, 1998, and was told about his alleged abuse, but according to his will-state, Constable Dunlop did not take a statement. Constable Dunlop says in his will-state that he referred C-2 to Project Truth. Detective Inspector Hall's notes say that Constable Dunlop told him that C-2 had told Constable Dunlop that he was not ready to come forward yet and that he wanted to keep his identity between the two of them at that time. Given that the Father MacDonald matter was before the courts, it would have been prudent for Constable Dunlop to have disclosed C-2's contact with him to the OPP. This information was relevant in an ongoing criminal case.

The OPP interviewed C-2 on January 26, 2000, and he told the officers about his alleged abuse by Father MacDonald. Father MacDonald was charged in relation to these allegations on April 10, 2000. The matter is further discussed in the section “Project Truth Investigation of Father Charles MacDonald” and in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Preparation of the Will-State and Incremental Disclosure

Between January and April 2000, Constable Dunlop worked on the will-state that he had been ordered to provide. On January 18, 2000, Detective Inspector Hall and Detective Constable Dupuis met with Constable Dunlop in order to interview him as part of Project Truth’s conspiracy investigation. They presented him with a list of forty-four questions. Constable Dunlop explained that he was currently preparing his will-state and asked if he could incorporate his answers to these questions in this document. Detective Inspector Hall agreed.

In the months when Constable Dunlop was preparing his will-state, he began incrementally turning over tapes, notes, and other documents to Staff Sergeant Derochie and Acting Inspector Carter. Staff Sergeant Derochie testified that Constable Dunlop was instructed to provide everything that he had, regardless of whether he had already turned it over. A copy of these documents was then given to Detective Inspector Hall. Detective Inspector Hall testified that Project Truth already had most of the materials that Constable Dunlop turned over, with the exception of his notes. Detective Inspector Hall said that he received a bundle of notes that was three to four inches thick. Most of these notes had been taken while Constable Dunlop was off-duty. Notwithstanding his work status, Constable Dunlop failed to disclose his notes in a timely fashion to the CPS. These notes contained allegations of criminal conduct and/or information relevant to on-going criminal investigations and as a police officer, off-duty or not, Constable Dunlop was required to provide them to the CPS in a timely fashion.

Constable Dunlop completed his will-state on April 7, 2000, and Detective Inspector Hall was provided with a copy of it, along with four binders of appendices, on April 10, 2000. Constable Dunlop also delivered a copy of his will-state to Crown Shelley Hallett on June 27, 2000.

Ottawa Police Service Investigation of Constable Perry Dunlop

In addition to the comprehensive order issued to Constable Dunlop on January 10, 2000, the Cornwall Police Service also determined that he should be investigated for two issues. The first was “the apparent inconsistency” between his testimony at the Marcel Lalonde preliminary inquiry and the notes that were subsequently disclosed. The second issue related to Crown Robert Pelletier’s

concerns about events during a preliminary hearing in the Father MacDonald prosecution. There was an allegation that Constable Dunlop had sent C-8 to look at witnesses during this hearing. At the same hearing, Gerald Renshaw testified that Constable Dunlop was in uniform when he took a statement from him that was used to support his civil action.

On January 6, 2000, CPS Chief Repa wrote to Ottawa Chief of Police Brian Ford requesting an investigation into these matters. Two Ottawa Police Service officers were assigned to conduct this investigation. They determined that the allegations about the events at the preliminary inquiry were unsubstantiated. However, they concluded that “Constable Dunlop’s testimony contradicts in several points his actual notes and Will-State.” Their report noted, “The Crown Attorney from the West Region is to review and decide if charges of perjury are appropriate or if the matter will be left for the courts to pursue this matter at the trial of Marcel Lalonde on September 11, 2000.” The Crown determined that there was no reasonable prospect of conviction and the Ottawa police informed Chief Repa in July 2000 that no charges would be laid.

Constable Perry Dunlop Leaves Cornwall

On June 29, 2000, Constable Dunlop left the Cornwall Police Service and sued for constructive dismissal. The Dunlop family moved to British Columbia in July 2000. Helen Dunlop testified that they wanted to go somewhere where nobody knew them, to get away from the stress and raise their children.

C-8 Recants Just Prior to Marcel Lalonde Trial

The trial of schoolteacher Marcel Lalonde was held in September 2000. In a preparatory meeting with Crown Claudette Wilhelm and CPS Constable René Desrosiers on September 7, C-8 admitted that he had lied in a statement that he had given to Constable Dunlop. On September 19, 2000, C-8 testified that contrary to his previous allegations, he had not been abused by Mr. Lalonde on a school trip to Toronto. C-8 told the Court:

I guess when I was talking with Perry he’s telling what I, you know, he kept asking me if anything—if anything has happened within the school itself because he said, “If it did,” he says, “You can sue the school board instead of just suing him.” And somehow I ended pulling the trip Toronto [sic] in on that statement which I should of never of done because I believe it’s not right. I don’t want to see the guy get off for something that I said wasn’t true. Everything else I’ve said was true on the statements.

Notwithstanding the recantation of C-8, Justice Monique Métivier found Marcel Lalonde guilty on six counts relating to C-45, C-8, another victim, and C-66 on November 17, 2000.

C-8 was investigated for perjury as a result of his evidence. Crown Wilhelm advised not to lay charges, despite sufficient evidence to do so, in part because “[a]lthough there is no evidence of overt actions by other individuals to cause [C-8] to perjure himself, it is evident that individuals took advantage of his mental state to further their own agendas.”

After C-8 gave this testimony, he received a phone call from Helen Dunlop. In an interview with police, C-8 said:

She [Helen Dunlop] said, what are you doing [C-8]? I thought we were your two best friends?

I’m like, yah, you are Helen. So what the hell are you lying for? I said, no, I’m not lying Helen. She said I think you’re lying. You are lying. No Helen, I’m sorry, but I says, I can’t fucken do this ... she says, I hope you can sleep good at night ... it was very stupid, and I said no. And then she said goodbye [sic]. I’m surprised that she even said by [sic].

Ms Dunlop testified at the hearings about why she called C-8:

Because I was upset that he had changed so dramatically in such a short amount of time. I don’t know if they had something on him or what made him change so dramatically, but it upset me because he had told the truth and now he was undoing the truth and making Perry look like the bad guy, and that upset me. And I wanted to phone and get it from him why are you doing this?

This is yet another area I would have expected Commission counsel to question Mr. Dunlop about. Without his evidence, I am not prepared to conclude that he was as suggestive in his questioning of C-8 as C-8 has related. However, by conducting investigations without the knowledge or authorization of the CPS, failing to keep proper notes and other records, and then failing to disclose relevant information in a timely manner, Constable Dunlop put this witness’ credibility and thus this prosecution in jeopardy.

Charges Against Father Charles MacDonald Withdrawn

C-8 had also told Constable Dunlop that he had been allegedly abused by Father MacDonald. One of the allegations involved an assault with a candle on the day

of his father's funeral. On March 12, 2002, Crown Lorne McConnery interviewed C-8 to prepare him for trial. According to notes taken by Crown Kevin Phillips, C-8 said that he initially spoke with Constable Dunlop because he wanted to make a complaint about Ron Leroux. C-8 said that he gave a written statement about Mr. Leroux and that he "never saw it again." C-8 began to cry, and Mr. Phillips' notes state:

Unprompted, [C-8] goes back to impressing upon us that he never wanted to make a complaint about Father Charles in the first place. He says that while he was talking to Dunlop "I felt like more was better" and that he included Father Charles "to satisfy Perry." [C-8] says that he felt pressure as a result of being rushed around all the time. "He (Dunlop) kept pushing the fucking priest." "I felt like I had to do all of this."

C-8 then said that the events at his father's funeral didn't happen. He said, "I felt pressured. I was made to feel that more was better." Again, while I am not prepared to conclude that Constable Dunlop pressured C-8 as alleged, his failure to follow standard police protocol and obey lawful orders put this prosecution in jeopardy for this and other reasons.

Crown McConnery then decided to withdraw the two charges against Father MacDonald that related to the alleged abuse of C-8. This issue is described in greater detail in Chapter 11.

When C-8 was being interviewed by the CPS about his testimony in the Lalonde matter, he said that Constable Dunlop "never said, [C-8], I want to you lie for me, no ... I just felt like I was obligated."

C-8 testified at this Inquiry that, at the time, he was facing charges for sexually assaulting a teenage girl and Constable Perry Dunlop:

... was the only friend I had. I had nobody around and Perry was taking me to his place all the time for meals and, you know, I was a family figure, you know, meet his kids, everything is good. You know, he's playing music. You know, I feel like I'm part of the family. How do I let them down, you know? ... I felt like I had to give him something. I just couldn't remember so I felt I had to fabricate something.

Constable Dunlop dealt with vulnerable individuals when he was speaking to victims. The mistakes he made in, at the very least, unwittingly pressuring C-8 are indicative of the fact that he lacked specialized training on the investigation of historical sexual abuse. This said, he should have known that asserting any

pressure on complainants during the reporting of their allegations was improper and could jeopardize their cases. In addition, as a police officer, he should have known that certain techniques, such as asking leading questions while taking statements, are problematic.

Perry Dunlop's Testimony in Father Charles MacDonald 11(b) Motion

In May 2002, Mr. Dunlop testified in a motion to stay proceedings against Father MacDonald. He was questioned extensively about the disclosure of his notes and other materials.

He told the Court that he hid his notes and that he kept them in many different places because he was afraid that someone would come in and seize them. It took him a significant time to gather all of his materials because of this practice. He claimed that he was not able to produce them when initially requested because he was not given the time to do so, until he was directed to complete his will-state in 2000. Considering that Constable Dunlop was given both oral and written orders as early as mid-1997, I find his testimony on this point wholly unsatisfactory. If he did not have sufficient time to gather up his documents and then disclose them as he stated, he should have asked for time off to fulfill this function. He was a police officer with several years of experience at the time and was well aware of police and Crown disclosure requirements in criminal prosecutions.

He added that he did not trust the OPP to take custody of his evidence, because the OPP had destroyed the tapes that they seized from Ron Leroux's residence in 1993. He added that he "just didn't trust him [Detective Sergeant Pat Hall]. I just didn't like his demeanor ... I found him terse." In my view Constable Dunlop had lost perspective and therefore no longer had confidence in Project Truth officers' ability to conduct these investigations.

Finally, Mr. Dunlop added that he could not say for a fact that everything that he had assembled had been turned over.

The stay of proceedings was granted on May 13, 2002.

Further Request for an Investigation of Perry Dunlop for Perjury or Obstruction of Justice

In the months following the stay of proceedings in the Father MacDonald matter, numerous conversations took place between Detective Inspector Hall, officials from the Cornwall Police Services, and various Crown attorneys about whether Mr. Dunlop should be investigated for perjury or obstruction of justice, and who should initiate and conduct the investigation. Staff Sergeant Derochie testified that

the CPS was concerned with the “optics” of the CPS conducting an investigation into Mr. Dunlop, given that he was suing them and the CPS had been accused of persecuting him. Detective Inspector Hall took the position, “It is not the mandate of the Ontario Provincial Police to investigate Perry DUNLOP.”

It was decided that Detective Inspector Hall would compile a list of incidents to be investigated and that while the CPS was prepared to investigate, it would seek advice from the Crown as to whether an outside police force should do so. If the decision was made to bring in an outside police force, the CPS would make that request. I have heard no evidence that this list was ever prepared.

In June 2003, Chief Repa wrote to Crown Murray MacDonald “to seek clarification as to whether or not allegations of criminal misconduct occurred in matters pertaining to the Project Truth investigation and subsequent trials.” The letter said:

The concerns or allegations about Mr. Dunlop pertain to his apparent continuous contacts with witnesses or potential witnesses; the withholding of evidence; and counseling perjury. Mr. Dunlop was a police officer in the Province of Ontario for a portion of the time frame of these allegations. These allegations have not been forwarded to us in a formal manner but rather we have been put on notice that the allegations have been made. We are now waiting the decision and guidance of the Crown Attorneys involved in the criminal proceedings.

James Stewart, Director of Crown Operations, Eastern Region, replied to this letter, stating that Marc Garson had looked into similar allegations in 1999 and that the Crown’s advice was unchanged. He added that if a brief was prepared, the Crown would review it, but stated, “The Crown does not normally investigate matters and normally does not tell a police service to investigate a given individual.”

It is my view that Mr. Stewart’s response was correct. It is the police’s responsibility to investigate and the Crown’s role is to give an opinion, where necessary, on issues such as whether a reasonable prospect of conviction exists or if there are reasonable and probable grounds for charges.

The CPS then asked Detective Inspector Hall to provide them with a will-state or a statement as a basis for the investigation, but Detective Inspector Hall suggested waiting until the criminal proceedings against Jacques Leduc had concluded. Staff Sergeant Derochie testified that shortly after this happened, this Inquiry was called and the matter was put on hold.

Lack of Timely Disclosure

Constable Perry Dunlop had contact with many alleged victims in the various cases investigated by the OPP. Some of these encounters were problematic, most notably the influence he had on certain individuals, such as C-8, Ron Leroux, and C-18, while other contacts were much more benign. Although these interactions were raised in a number of the prosecutions, I would note that these contacts were never the sole reason why convictions were not obtained.

Mr. Dunlop testified in the Father MacDonald matter, “Throughout this whole case that I’ve been involved with, Your Honour, I’ve become this person that people want to contact, and I don’t turn victims away for the simple humanity of it.”

It is certainly understandable why Mr. Dunlop continued to be there for victims who reached out to him, and why he occasionally did some reaching out on his own. It is clear to me that he is a compassionate individual whose involvement in these matters began with the best of intentions.

What is less understandable is why Constable Dunlop did not provide the disclosure that was requested by the OPP in a timely manner.

Part of this failure is attributable to poor legal advice. It is also partly due to Constable Dunlop’s complete lack of trust in public institutions and his inability to retrieve his own documents in a timely fashion. I understand that Constable Dunlop believed he was wrongly investigated, or in his mind, persecuted by his own police service, but I fail to see how this led to a complete lack of trust in the OPP. Project Truth was put in place as a result of his work and at his request. Although Constable Dunlop may have been disappointed that he was not given a greater role in this project, it does not excuse his failure to cooperate.

Constable Dunlop also provided misleading or contradictory statements in his notes and when he testified in various judicial proceedings. One example is when he was asked when C-8 initially disclosed that he was a victim of abuse of Marcel Lalonde. Another is when he was questioned about providing documents to Richard Nadeau, which were then posted on his website.

He continued providing statements to the media despite being served with police orders by his superiors and requested to refrain from doing so by Project Truth officers. It was explained to him that communicating with the media could jeopardize prosecutions, undermine the investigations, and prevent victims from reporting. Despite it all, he continued to do so.

Although Constable Dunlop’s cause, the protection of children, was undoubtedly in the public interest, at some point it seems that Constable Dunlop came to believe that the ends justified the means. He acknowledged this as early as 1995 in his interview with the television program *The Fifth Estate*. Certainly by the time of the Project Truth investigation, he had lost objectivity and his sense of professional responsibility. Ironically, he engaged in activities that had a negative

impact on his ultimate objective of securing convictions against alleged perpetrators of child sexual abuse.

It is important to emphasize that the OPP failed to develop and apply proper practices or protocols to deal with the problems that arose from Constable Dunlop's involvement in the Project Truth investigation and, in particular, some of the problems created by his lack of cooperation.

The OPP should have done more to obtain full disclosure from Constable Dunlop more quickly. They could have asked him much earlier through the CPS to organize his materials and prepare a will-state and a list of documents in his possession.

As for his contact with plaintiffs and witnesses, the OPP needed to track these contacts and develop a plan to minimize exposure from them.

As previously noted, the OPP should not have waited until disclosure issues arose in the Marcel Lalonde trial in the fall of 1999. The OPP should have acted immediately after Constable Dunlop refused to sign the release in 1998.

I am cognizant of the fact that the OPP lacked jurisdiction and the CPS had to issue the orders, but the OPP had to fully inform the CPS of the problems. I do not think the CPS was fully aware of the extent of Constable Dunlop's interference in the OPP investigations and prosecutions. The OPP needed to communicate better with the CPS.

Project Truth Investigation of Father Charles MacDonald

As previously mentioned in this chapter, on March 11, 1996, Father Charles MacDonald was arrested in relation to allegations of abuse made by David Silmser, John MacDonald, and C-3.

After the arrest, a number of new allegations were made against Father MacDonald. C-8 came forward to the OPP in January 1997, and the Fantino Brief included a number of allegations about abuse perpetrated by Father MacDonald.

Assignment of Detective Constable Joe Dupuis to Father Charles MacDonald Investigation

As discussed earlier, Detective Constable Joe Dupuis joined the Project Truth team in September 1997. Shortly after joining Project Truth he was assigned to be the lead investigator on the Father MacDonald investigation.

In early September 1997, Detective Constable Dupuis did not have a copy of the earlier investigation into Father MacDonald. Detective Constable Dupuis did not have an opportunity to review the file on Father MacDonald when he was initially assigned to this investigation. He was not aware of the status of

earlier charges against Father MacDonald including the fact that the preliminary inquiry had been adjourned in February 1997 because of allegations by a new complainant, C-8, and that it had resumed in early September and been completed.

Detective Constable Dupuis' principal role was to deal with the new allegations against Father MacDonald. He was not involved with the prior counts that were already before the court. That was Detective Constable Michael Fagan's investigation. Detective Constable Dupuis testified that he remembers receiving the file from Detective Constable Fagan but he could not recall when this was. On November 26, 1998, Detective Constable Dupuis met with Detective Constable Fagan. This was more than one year after Detective Constable Dupuis was assigned this investigation. At the meeting he took possession of four volumes that he identified as the investigation into sexual assault, the Cornwall Police Service (CPS) and Ottawa Police Service investigation into sexual assault, the alleged agreement not to lay charges by the CPS, the Crown attorney and the Diocese of Alexandria-Cornwall, and the allegations of obstruction of justice. It does not appear that he received a copy of Detective Constable Fagan's current investigative file.

Detective Constable Dupuis indicated in his notes that on December 9, 1998, he attended the courthouse in Cornwall and picked up a copy of the information laid by Detective Constable Fagan. Detective Constable Dupuis testified that he received his instructions about the investigation primarily from Detective Sergeant Hall.

According to Detective Inspector Hall, the OPP recognized the need to fast-track the Father MacDonald case because it was an ongoing matter before the court. Detective Inspector Hall explained that the Father MacDonald case was the "highest priority" and that he recognized the need to ensure they did not get into trouble with *Charter* delays.

Despite the fact that this was a stated priority, no interviews were conducted until September 1997. In addition, Detective Constable Dupuis was the lead investigator assigned to this case even though he did not join the Project Truth team until September 1997.

Given the need to prioritize the Father MacDonald investigation, I question why Detective Constable Dupuis was assigned as the lead investigator. It might have been more appropriate to assign either Detective Constable Steve Seguin or Detective Constable Don Genier to the file given that by September 1997, they had been involved with Project Truth for several months and were familiar with the allegations contained in the Fantino Brief. In contrast, Detective Constable Dupuis was completely unfamiliar with the new allegations and with the charges against Father MacDonald that were making their way through the court system at that time.

Detective Inspector Hall explained that the delay in this investigation was due to several factors: Project Truth was not set up until August 1997; the officers were still dissecting the Fantino brief; and the team was dealing with the allegations made by Claude Marleau. Detective Inspector Hall also said that one of the interviews relating to the Father MacDonald case was conducted in Edmonton and it was delayed in order to coordinate the interview with a trip for a separate investigation in the Northwest Territories in which Detective Inspector Hall was involved.

I find these reasons insufficient to explain the delay in the Father Macdonald investigation. Detective Constable Seguin or Detective Inspector Hall could have conducted local interviews during the summer of 1997. Moreover, the Father MacDonald investigation should have taken priority over investigating Mr. Marleau's complaints because of the need to avoid undue delay with his charges.

I also find it problematic that Detective Constable Dupuis did not have the entire file regarding the previous investigation on Father MacDonald at his disposal when he was first assigned to the investigation and that there was some delay in getting this to him.

New Alleged Victims Come Forward to OPP

During the fall of 1997, the OPP conducted a number of interviews of new complainants. Three of the individuals were identified either directly or indirectly from the Fantino Brief. Kevin Upper contacted the Project Truth office after reading a newspaper article about the investigation.

C-4

In early fall 1997, Detective Constable Dupuis contacted C-4 and left a message on his answering machine. Although Detective Constable Dupuis did not say why he was calling, C-4 was aware of what was going on in Cornwall and knew Detective Constable Dupuis was calling to ask if he had any information that could help the investigation. According to C-4, receiving that first call was a "very traumatic experience" and he had to decide whether to call Detective Constable Dupuis back. On October 9, 1997, Detective Constable Dupuis left another message for C-4.

On September 18, 1997, Detective Constable Dupuis interviewed one of C-4's brothers and learned that Carson Chisholm had tried to interview him in February 1997 and wanted to know if he was a victim of Father MacDonald. This individual did not make any allegations against Father MacDonald but did say that both of his brothers also knew Father MacDonald. At the time,

Detective Constable Dupuis did not know who Mr. Chisholm was, but he was sure someone was assigned to find out who he was and what his involvement was.

Detective Constable Dupuis was able to reach C-4 on the phone on October 21, 1997, and asked if he could interview him for Project Truth. C-4 understood that Detective Constable Dupuis was calling people who had served as altar boys at a particular church. Detective Constables Dupuis and Seguin attended C-4's home and interviewed him, during which time he said he had been sexually abused by Father MacDonald. Arrangements were made to take a videotaped statement.

Detective Constables Dupuis and Seguin took a videotaped statement of C-4 on October 28, 1997. C-4 told the officers that he had been sexually abused by Father MacDonald at a cottage in Egansville when he was approximately seventeen years old. In November 1997, Detective Constable Seguin contacted C-4 and asked if the OPP could take a statement from his wife. Detective Constables Dupuis and Seguin again attended C-4's home on November 27, 1997, to take a statement from his wife and have C-4 review his own statement. The officers asked C-4 if he had told his parents about the alleged abuse and asked to interview them. At this point C-4 had not told his parents. He explained that he grew up in a "very closed family" so it was difficult for him to talk to his parents about this kind of thing. C-4 spoke with his parents before they were approached by the OPP. Detective Constable Seguin interviewed C-4's parents on January 7, 1998.

Robert Renshaw

Another alleged victim interviewed by the Project Truth officers in the fall of 1997 was Robert Renshaw. In February 1997, Mr. Renshaw had met with Constable Perry Dunlop and told him he had been a victim of Father MacDonald and Ken Seguin in his youth. Robert Pelletier found out about Constable Dunlop's interactions with Mr. Renshaw and on March 14, 1997, he asked Detective Constable Genier to interview Constable Dunlop about this. Detective Constable Genier took a statement from Constable Dunlop regarding his involvement with Mr. Renshaw.

On November 5, 1997, Detective Constables Seguin and Dupuis met with Mr. Renshaw at the OPP's Walkerton Detachment and took a video statement from him. Mr. Renshaw testified that his wife was asked to stay out of the room during the interview and that the behaviour of the officers made him feel like he "was the bad guy." Mr. Renshaw also said he had difficulties with Detective Constable Seguin's name:

The very first day that I met Mr. Dupuis and Mr. Seguin, I kind of thought that it was a little weird that you're going to send me a police officer with the same name as Ken Seguin, and I expressed those opinions, and I found after that, that everything went to hell in a handbag to deal with him.

During this interview, Mr. Renshaw alleged that Ken Seguin abused him over a considerable period of time, during some of which Mr. Seguin was his probation officer. He also alleged abuse by Father MacDonald. He explained that after his father passed away, he was having difficulty dealing with it and he asked Mr. Seguin if he knew of anyone who could help him. A few days later, Mr. Seguin brought Mr. Renshaw to Father MacDonald's house, where Father MacDonald sexually assaulted him.

According to Mr. Renshaw, both officers were polite during the interview and gave him as much time as he needed to answer the questions. They never challenged him or suggested he was not telling the truth.

Mr. Renshaw testified that he received a call from his sister in northern Alberta who told him that Detective Constable Seguin had phoned her and told her Mr. Renshaw's story. He said the officers had never told him they would be contacting her or any of his siblings. He had not had a relationship with his sister for almost thirty years and found this phone call "very intrusive." Mr. Renshaw had no more dealings with Detective Constable Seguin after this.

Kevin Upper

Another alleged victim, Kevin Upper, gave the OPP a videotaped statement regarding his allegations against Father MacDonald on October 3, 1997. Mr. Upper told Detective Constables Seguin and Dupuis that he had been an altar boy at St. Columban's Church for several years, during which there was an incident when Father MacDonald sexually molested him. Mr. Upper was unclear on the dates when he was an altar boy. He does not recall the police or Crown showing him church bulletins that may have had dates on them from when he was serving mass. Mr. Upper suggested that the officers ask his mother for details about when he was an altar boy.

C-5

Another alleged victim, C-5, was interviewed by the OPP on September 30, 1997. Detective Constables Seguin and Dupuis interviewed C-5 for approximately forty minutes. Most of the discussion related to his alleged abuse by

Malcolm MacDonald and Ken Seguin. When asked if anyone else abused him, he disclosed abuse by Father Charles MacDonald while in confession at his school. This was the first time he had disclosed this alleged abuse to anyone.

Father Charles MacDonald Arrested and Second Set of Charges Laid

The Crown brief based on the fall 1997 Project Truth investigation was provided to Robert Pelletier on January 6, 1998. The Crown recommended a number of charges be laid against Father MacDonald in relation to the complainants discussed above as well as C-8, whose allegations were discussed in an earlier section of this chapter.

An information was sworn on January 26, 1998, and arrangements were made for Father MacDonald to surrender himself to Detective Constable Dupuis for arrest the following day. Detective Sergeant Hall understood that the Crown would likely want to join these new charges with the initial set of charges that preceded Project Truth. He assumed this was what the Crown would do because having more allegations would increase the likelihood of a conviction. The decision to join the charges is discussed in detail in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Hallway Discussion Between Michael Neville and Robert Pelletier

Detective Constable Dupuis testified that he recalls a chance meeting in an Ottawa courthouse hallway between Crown Pelletier and Father MacDonald’s defence counsel, Michael Neville, who discussed the Father MacDonald case. According to Detective Constable Dupuis, Mr. Pelletier advised Mr. Neville that further charges were coming and asked if he wished to have one trial or two. Mr. Neville replied that he wanted one trial and that in return he would waive his client’s section 11(b) *Charter* right to be tried within a reasonable time. Detective Constable Dupuis believes the conversation took place before January 26, 1998, but he could not recall whether it occurred before or after he delivered the Crown brief to Mr. Pelletier on January 6, 1998. Detective Constable Dupuis testified that the conversation did not have any effect on the way that he conducted the investigation. He did not record this conversation in his notes. Detective Constable Dupuis did not discuss this conversation with anyone until the stay application was brought in 2002, at which time he advised Crown Lorne McConnery and possibly Detective Inspector Hall about this discussion.

Detective Inspector Hall recalled hearing about a conversation between Mr. Pelletier and Mr. Neville in which there was some indication that Mr. Neville was going to waive Father MacDonald’s section 11(b) right. Detective

Inspector Hall heard that this information was going to be put on the record at a subsequent court appearance by Crown Pelletier, but he did not attend the next appearance and it was not put on the record. This issue is discussed in more detail in Chapter 11.

Father Charles MacDonald's "Apology" Letters

The OPP became aware in late 1998 and early 1999 of letters written by Father MacDonald to alleged and potential alleged victims. On September 1, 1998, the OPP interviewed C-100. This was an "informal interview" because C-100 was not very keen to participate in the investigation. He told Detective Constable Seguin that he was sexually abused by Father MacDonald but did not remember what happened other than a dream he had of being abused by Father MacDonald. He said he did not remember much of his childhood prior to seventeen years of age. C-100 also told Detective Constable Seguin that he had received a greeting card from Father MacDonald dated December 31, 1997, saying Father MacDonald was sorry about what he did to C-100 and did not mean to hurt him in any way.

In January 1999, the OPP learned that C-4 had also received a letter of apology from Father MacDonald. Detective Constable Dupuis went to C-4's home on January 22, 1999, to give him a copy of his statement to read prior to meeting with the Crown in preparation for the upcoming preliminary inquiry, and C-4 told him about the letter. Father MacDonald gave this letter, dated December 30, 1997, to C-4's brother sometime in or after March 1998; he in turn gave it to C-4 in late summer 1998. The letter stated:

I realize now I should have said or written these words to you a long time ago. I honestly didn't realize you were hurting.

What's done is done—but I want to tell you, [C-4], that I am very sorry for causing you any hurt or pain. It was never my intention to hurt you. I wish I could change things, but ...

Again I'm sorry. I hope you can find it in your heart to forgive me.

Sincerely, Charles F.

Approximately one month later, Detective Constable Dupuis interviewed C-4's brother about the letter. He said that Father MacDonald had contacted him in March 1998 and asked if they could meet because he had a letter for C-4 that

he could not deliver to C-4 himself, “he said because of a restraining order.” Detective Constable Dupuis asked C-4’s brother if Father MacDonald said anything about C-4. The brother replied, “Just before he left, Charles was apologetic for his actions, and said to me, ‘He was of age.’”

Detective Constable Dupuis could not recall if he took any action and acknowledged that he should have looked into this further and found out if there was in fact a restraining order. I agree. Father MacDonald had been released on conditions not to contact complainants. Given the information Detective Constable Dupuis had received from C-4’s brother, he should have investigated further to determine if Father MacDonald had breached release conditions or attempted to obstruct justice. In my view, the OPP should have tried to interview Father MacDonald about this.

Preliminary Inquiry

The OPP officers contacted the victims to advise them of the upcoming preliminary inquiry date. The preliminary inquiry began in March 1999. On May 3, 1999, Father MacDonald was committed to stand trial on all counts. Following the preliminary inquiry, Detective Constable Dupuis continued to have contact with the complainants to assist in their preparation for upcoming phases of the court process.

The pre-trial was scheduled for September 7, 1999. On September 7, it was put over to October 22, 1999.

Change in Crown Attorney

As will be discussed in further detail in Chapter 11, in the spring of 1999, Shelley Hallett took over responsibility for prosecuting the Father MacDonald case from Robert Pelletier. It appears that Detective Constable Dupuis contacted some of the complainants to advise them of the change in Crown. This is yet another instance where Victim/Witness Assistance Program services would have been helpful to Project Truth officers and complainants.

C-2’s Allegations

In early 2000, the OPP became aware of another individual alleging he was abused by Father MacDonald. On January 17, 2000, Detective Inspector Hall received a call from Constable Perry Dunlop, who said that a victim had contacted him two years earlier, on February 12, 1998. The person had said that he was not ready at that time to come forward. Constable Dunlop felt that Project Truth should contact this individual. Constable Dunlop had recently been ordered by his superior officer to

provide a detailed will-state outlining all his contacts with victims of sexual abuse who might be of interest to the Project Truth investigation.

Detective Constable Dupuis interviewed C-2 on January 21, 2000. During this meeting, C-2 made allegations of sexual abuse against Father MacDonald, so Detective Constable Dupuis arranged for a videotaped interview to be conducted on January 26, 2000. At this point, the trial of Father MacDonald was scheduled for April 2000.

The allegation made by C-2 was different from previous allegations against Father MacDonald. In particular, he alleged he had been drugged and abused by more than one person in a ritualistic way. The volume of the Crown brief dealing with the C-2 allegations was provided to Crown Hallett on March 23, 2000. On March 30, 2000, she wrote a letter to Detective Inspector Hall recommending charges against Father MacDonald in respect of C-2's allegations. She noted that although one of his allegations was unusual, "there have been other bizarre allegations made by other complainants, unknown to [C-2], with respect to Charles MacDonald." She also pointed out that his second allegation, of being abused while making confession, bore some resemblance to complaints made by other individuals.

Charges were laid against Father MacDonald in respect of C-2's allegations on April 10, 2000. The initial trial date was adjourned and the preliminary inquiry on C-2's counts was completed on August 30, 2000. Detective Constable Dupuis does not recall having any discussions with Detective Inspector Hall or Crown Hallett about whether to adjourn the trial and add these new counts to the indictment. He was not asked his opinion regarding the merits of joining all the charges together, nor did he have an opinion at the time as to what should be done. Detective Inspector Hall recalls one discussion with Ms Hallett about whether an adjournment would be granted in the Father MacDonald case because of C-2 coming forward. Detective Inspector Hall said that he preferred that the trial go forward or at least be adjourned for only a short period. He explained that although it was ultimately the Crown's decision, the police would have some input into such a decision.

An indictment for all the charges, including those that related to C-2, was prepared on October 18, 2000. The decision to join these new charges with the older charges, and the decision in April 2002 to withdraw these charges, will be explored more fully in Chapter 11.

Dunlop Boxes

On April 18, 2000, nine banker's boxes of material from Constable Perry Dunlop were brought to the Project Truth office. Detective Constable Dupuis recalls that

they were moved there from the Cornwall Police Service so that Ms Hallett could go through them, although he cannot recall what prompted the boxes to be moved. As will be discussed in Chapter 11, the boxes were moved at Ms Hallett's direction, and Detective Inspector Hall was not happy about it.

Detective Constable Genier reviewed the boxes for material relevant for Project Truth files other than Father Macdonald and Jacques Leduc. As Detective Constable Genier explained in his statement to the York Regional Police, those files were assigned to Detective Constable Dupuis and the review was going to be done by Ms Hallett. Detective Inspector Hall testified that although Detective Constable Genier was not assigned to review the nine boxes for disclosure in those two cases specifically, had he seen anything of relevance he would have pointed it out to Ms Hallett or Detective Constable Dupuis. Given that disclosure problems had already arisen in the Marcel Lalonde case, it would have been prudent for Detective Inspector Hall to assign Detective Constable Dupuis to assist as he was involved in both the Father MacDonald and Leduc cases.

Application to Stay Father Charles MacDonald Proceedings

In April 2002, defence counsel filed an application to stay the proceedings against Father MacDonald based on unreasonable delay. On May 13, 2002, Justice Chilcott allowed the section 11(b) application and all the charges were stayed.

Detective Constable Dupuis testified that he thought the Father MacDonald case had been moving too slowly and that he had discussed this with other Constables who felt the same way. However, according to Detective Constable Dupuis there was no concern among the officers that there would be a delay argument made by defence prior to the stay application. He realized there was a problem when defence counsel brought the stay application. Detective Constable Dupuis did not think the issue of delay was one that he had to deal with personally.

Detective Inspector Hall felt that the principal reason for the adjournment of the trial in May 2000 was the laying of additional charges in respect of C-2's allegations and joining those charges with existing charges to be prosecuted at the same time. Detective Inspector Hall explained that if Project Truth had heard about C-2's allegations in 1998 when he first spoke to Constable Dunlop, they would have been investigated at that time and charges would have been laid in 1998 rather than 2000, which could have led to two years less delay. Detective Inspector Hall acknowledged, however, that even without the C-2 allegations other problems necessitated an adjournment in 2000, such as the further disclosure by Constable Dunlop.

Investigation of Death Threats

Ron Leroux swore an affidavit that was included in the brief given to Chief Julian Fantino in December 1996. In the affidavit, he claimed to have overheard death threats being made against Constable Perry Dunlop and his family by Malcolm MacDonald, Father Charles MacDonald, and Ken Seguin, at Mr. Seguin's residence in or around November 1993. Mr. Leroux repeated these claims during his statement at the OPP Orillia Detachment in February 1997. Detective Sergeant Pat Hall was assigned to investigate these allegations in March 1997. The Crown brief was completed on August 19, 1998, and Crown Attorney Robert Pelletier provided his written opinion on December 22, 1998. Detective Sergeant Hall concluded that there were no reasonable and probable grounds to lay charges and, after reviewing the brief, Mr. Pelletier agreed.

Initial Investigative Action

It appears that Detective Inspector Tim Smith and Detective Sergeant Hall initially acted quickly in relation to the death threats. After being assigned to the case on March 19, 1997, Detective Sergeant Hall promptly set up an interview with Helen Dunlop for March 21 to determine whether she and her family were in immediate danger. Detective Inspector Smith contacted Chief Anthony Repa of the Cornwall Police Service (CPS) and informed him that he was investigating a threat against Constable Dunlop and his family. At Detective Inspector Smith's request, Chief Repa entered the Dunlop residence in the Ontario Municipal and Provincial Police Automation Cooperative system as a high priority so that officers could respond quickly in case of a call.

Detective Sergeant Hall and Detective Constable Steve Seguin interviewed Helen Dunlop on March 21, 1997. She insisted on tape-recording the interview. Ms Dunlop described the conversation that Mr. Leroux claimed he had overheard between Mr. Seguin, Father MacDonald, and Malcolm MacDonald. The threats were allegedly made just before Mr. Seguin's suicide in the fall of 1993. She explained that her husband had reported this allegation to Chief Fantino in London because they could not take the information to the Cornwall or Ottawa police. She also explained that death threats had been made against her daughter in the past, and that a woman had been subsequently charged (see Chapter 6, on the institutional response of the Cornwall Community Police Service).

Ms Dunlop expressed frustration at the lack of action by the police against the conspirators. She claimed that she was concerned about the death threats but stated that she did not feel that she needed protection at that time, unless the police felt that she did after speaking to the alleged conspirators.

I believe that Ms Dunlop's concerns should be placed in some context. The alleged threats had been made three years earlier and had not been acted on. Ms Dunlop first learned of the death threats on October 30, 1996, after Mr. Leroux told her husband and Charles Bourgeois about the conversation he overheard. The Dunlops did not immediately report this to the police. The death threats were first referenced in the amended statement of claim for Constable Dunlop's civil action that was filed on November 15, 1996. The first time the threats were directly mentioned to police authorities was in December 1996, when Mr. Bourgeois sent Chief Fantino a package of materials. As previously mentioned, these materials were forwarded to the Ontario Provincial Police (OPP) in February 1997. At some point, Constable Dunlop also reported the threats to the Metro Toronto Police, although the exact date is unclear.

Ms Dunlop testified that she believed the threats to be real and that both she and her husband found them quite upsetting. I find the Dunlops' failure to report the threats immediately to the authorities inconsistent with the actions of individuals who were truly afraid for their lives. This inconsistency may be explained, in part, by other issues facing the Dunlop family at this time, which are more fully described in Chapter 6.

Detective Inspector Hall testified that this was the first time he had investigated death threat allegations that were so dated. He said that typically alleged victims go to the police immediately after they find out about the threats. He questioned why no one had gone to the police sooner and noted that no attempts had been made to harm the Dunlops since the threats were allegedly uttered three years earlier.

The officers asked Ms Dunlop if her husband would agree to be interviewed. She informed them on April 4, 1997, that he did not wish to be interviewed. Constable Dunlop's refusal may also have affected their view regarding the validity of the threats.

On March 24, 1997, Detective Sergeant Hall told Ms Dunlop that the CPS had been notified about the death threats. He also told her that he would be conducting the investigation. She asked to be kept informed.

Detective Sergeant Hall spoke with Ms Dunlop again on April 4, 1997. She asked whether he had interviewed either Malcolm MacDonald or Father Charles MacDonald, and he informed her that this "would be our last stop." Detective Sergeant Hall said that he would update her the following week.

Detective Sergeant Hall was concerned that Mr. Leroux had said nothing about the threats when he was interviewed by the OPP in November 1993 after Mr. Seguin's suicide, or again in March 1994 during the extortion investigation. Detective Sergeant Hall planned to interview Mr. Leroux in Maine. However, on April 8, 1997, Detective Sergeant Hall was asked to attend a meeting with

regional Crown Peter Griffiths that was scheduled for April 24, 1997. Detective Inspector Smith asked him to wait until after the meeting to interview Mr. Leroux.

The week before the meeting, Detective Sergeant Hall informed Constable Dunlop that he was meeting with Mr. Griffiths on April 24 to review the case and obtain directions. Detective Sergeant Hall contacted the Dunlops again on April 30 and left a message that a decision had been made to investigate all of the allegations in the Fantino Brief.

Ms Dunlop testified that the police did not follow up with her or inform her of the status of her complaint. However, the evidence clearly demonstrates that, at least at the outset, Detective Sergeant Hall attempted to keep her informed about the progress of the investigation.

Investigation After the Initiation of Project Truth

After the April 24 meeting, it is clear that other Project Truth matters became a priority and Detective Sergeant Hall took no active steps to advance the death threat investigation between April 30 and July 30, 1997. Twice during this period he spoke to Ms Dunlop, who expressed frustration at the time the investigation was taking. She was also concerned that he had not yet interviewed Father MacDonald or Malcolm MacDonald and asked why they had not been arrested based on the materials that Constable Dunlop had provided. Ms Dunlop seemed to be tying the death threats very closely to the allegations of abuse in the Fantino Brief.

David Silmsen's Death Threat Complaint

On July 30, 1997, David Silmsen contacted the Prescott Detachment of the OPP and informed them that he was also the target of death threats. The Commander of the Prescott Detachment relayed this information to Detective Sergeant Hall, who set up an interview with Mr. Silmsen for August 1.

During this interview, Mr. Silmsen said that Constable Dunlop had told him that Mr. Seguin, Father MacDonald, Malcolm MacDonald, and a few other unnamed individuals had plotted to kill Mr. Silmsen as well as Constable Dunlop. Mr. Silmsen was quite upset when he came in for the interview. He testified at the hearing, "I was worried about it. If somebody's getting death threats, now, I'm going to be worried because I'm stuck right in the middle of this thing too."

Shortly after this statement was taken, Detective Sergeant Hall, Detective Inspector Smith, and Inspector Richard Trew of the CPS met with Constable Dunlop on August 7, 1997. The officers discussed a number of issues with Constable Dunlop, which are outlined in detail in the section "Interactions Between Project Truth and Constable Perry Dunlop." They also told Constable

Dunlop about Mr. Silmsen's allegations. Constable Dunlop denied telling Mr. Silmsen that threats were made toward him. Detective Sergeant Hall asked Constable Dunlop if he would give a statement to this effect. This upset Constable Dunlop, and Detective Inspector Smith resolved the situation by telling him that he could speak to Mr. Silmsen to straighten out the matter. The officers told Constable Dunlop that they would see if this satisfied Mr. Silmsen.

The following week, Constable Dunlop told Detective Sergeant Hall that he had spoken to Mr. Silmsen and cleared up the misunderstanding. The officers did not follow up with Mr. Silmsen. Several months later, in mid-November, Mr. Silmsen called Detective Sergeant Hall wanting to know if the police were still investigating the death threats and whether charges would be laid. Detective Sergeant Hall told him that they were investigating and that the information would be taken to Crown Pelletier for a decision on charges.

Detective Sergeant Hall provided the same information to Helen Dunlop when he spoke with her on November 17, 1997. He also told her that he had arranged to visit Mr. Leroux. Ms Dunlop informed Detective Sergeant Hall that she wanted to be updated every thirty days on the progress of the investigation.

Interview of Ron Leroux

Detective Sergeant Hall and Detective Constable Don Genier interviewed Ron Leroux in Maine on November 25, 1997, about the death threats and other matters raised in his statements. Detective Inspector Hall testified that the interview was delayed until this time because he was busy with Project Truth. He also wanted to combine this trip with another he had to make for a separate investigation.

During the interview, Mr. Leroux told the investigators that he did not hear how Malcolm and Charles MacDonald intended to carry out the threat. He also said that he was uncertain whether they were serious: "I figure this is the ranting and ravings of a bunch of old men here." Mr. Leroux stated that when he first told Constable Dunlop about the threats, Constable Dunlop did not "get excited."

Detective Inspector Hall testified that he did not find Mr. Leroux to be credible. Based on Mr. Leroux's statement and the other information he had to date, the officer did not feel that he had subjective grounds to lay charges.

Interviews With Suspects

Father Charles MacDonald was interviewed on January 27, 1998. He opted not to comment on the death threat allegations. Malcolm MacDonald was not interviewed until June 8, 1998. He denied the allegations.

Detective Sergeant Hall attributed the delay in interviewing Malcolm MacDonald to the fact that the officers were conducting interviews in the Father

MacDonald abuse case. He also cited a murder investigation, the 1998 ice storm, and the fact that Malcolm MacDonald went south in the winter as causes for the delay.

Submission of Crown Brief and Discussions With Helen Dunlop

Detective Sergeant Hall prepared a Crown brief and submitted it to Crown Pelletier on August 19, 1998, despite not having reasonable and probable grounds to lay a charge. In the time between the Ron Leroux interview and the submission of the Crown brief, Detective Sergeant Hall received a number of calls from Helen Dunlop, who wanted to know whether Malcolm MacDonald or Father Charles MacDonald had been interviewed. In December 1997, Detective Sergeant Hall learned that Ms Dunlop had contacted Crown Pelletier. Detective Sergeant Hall called her to explain that it is the police who lay charges, not the Crown.

In June 1998, Detective Sergeant Hall told Ms Dunlop that a brief had been put together for a Crown attorney to review. He said that he did not know which Crown would review it but that it would probably be someone from Toronto. Detective Sergeant Hall spoke with Ms Dunlop again after he had sent the brief to Mr. Pelletier in August 1998, and again told her he did not know who the reviewing Crown would be.

Detective Inspector Hall explained at this Inquiry that although he sent the brief to Mr. Pelletier, he did not tell Ms Dunlop that Mr. Pelletier would be doing the review because Mr. Pelletier “may have wanted to send it off. I mean ... I didn’t know for certain that he was going to be the ultimate person to review that file at that time.”

I am unsure why Detective Sergeant Hall refused to tell Ms Dunlop which Crown would be providing the opinion. Perhaps he was aware that the Dunlops were upset and distrustful because of the connection between Robert Pelletier and Murray MacDonald. In my view, Detective Sergeant Hall demonstrated a lack of transparency in his dealings with Ms Dunlop on this matter, which may have contributed to the breakdown in the relationship between the Dunlops and Project Truth.

Mr. Pelletier provided a written opinion on the investigation on December 22, 1998. Detective Inspector Hall testified that he did not feel that a four-month delay in reviewing the brief was unreasonable, given the size of the brief, its relatively less urgent nature, and the totality of what it contained.

Mr. Pelletier recommended that no charges be laid, for a number of reasons. Notably, the statements made by the suspects did not clearly indicate that the Dunlops were being threatened with death and that the only witness, Mr. Leroux, waited three years to bring the complaint. Moreover, Mr. Leroux did not think that the men were serious or capable of carrying out the threats. While Mr. Leroux

attributed Ken Seguin's suicide to the fact that he wanted to escape the pressure of being part of the conspiracy, Mr. Pelletier believed that it was more probably caused by Mr. Seguin's fear of exposure of his own activities. Finally, there was no supporting evidence to corroborate the allegations.

Detective Sergeant Hall agreed with Mr. Pelletier's assessment. He said at the hearing, "There was no doubt in my mind" that there were no reasonable and probable grounds to lay charges.

Beyond the lack of grounds, Mr. Pelletier also concluded that laying charges would not be in the public interest given the nature of the comments, the lapse in time, the death of Mr. Seguin, and the proceedings against Father MacDonald.

Follow-Up With the Complainants

Detective Sergeant Hall spoke with Helen Dunlop on December 24, 1998, and told her that no charges would be laid. She asked which Crown attorney had reviewed the brief. Detective Sergeant Hall told her he "did not know for certain however the written opinion came from Acting Regional Crown Pelletier."

Detective Sergeant Hall met with Helen and Perry Dunlop after the Christmas holidays, on January 6, 1999. He testified that the Dunlops were not happy with the decision not to lay charges, but he resisted the suggestion that it damaged his relationship with them:

It probably had an effect. To what—you know, to use the word "damage," I don't know what extent you could add to that. I mean, anybody making allegations and you don't lay charges is probably going to be upset.

Detective Inspector Hall did not contact Mr. Leroux or Mr. Silmsen to inform them of the decision not to lay charges.

Comments on Delay in the Investigation

There is little doubt that the death threats investigation moved significantly down Detective Sergeant Hall's priority list following the initiation of Project Truth. To some extent, this response was appropriate given the heavy workload shouldered by him and the other Project Truth investigators. There were reasons to doubt the seriousness of the allegations, including the delay in bringing them to the attention of the police, the unwillingness of the alleged main target of the threats (Constable Dunlop) to participate in the investigation, and the credibility issues surrounding the case's only witness, Mr. Leroux.

While this may account for some of the delay in the death threats investigation, it does not excuse the significant periods of inaction on the file, the lack of transparency in Detective Sergeant Hall's discussions with Ms Dunlop, or the failure to inform Mr. Leroux and Mr. Silmser of the results of the investigation. For the reasons stated in Mr. Pelletier's letter, it is clear that there were insufficient grounds to lay charges in this investigation. Had Mr. Leroux, Father MacDonald, Malcolm MacDonald, and others been interviewed earlier, perhaps that determination could have been made more quickly. Accordingly, I find that although Detective Sergeant Hall investigated these allegations thoroughly, he failed to do so in a timely manner.

Investigations of Complaints of Claude Marleau and C-96

Claude Marleau Contacts OPP

In late July 1997, Claude Marleau read an article in the Quebec City newspaper *Le Soleil* and learned of the Project Truth investigation in Cornwall, Ontario. The article discussed the allegations of sexual abuse involving young people in the Cornwall area, talked about Constable Perry Dunlop, and provided a 1-800 telephone number for the Ontario Provincial Police (OPP).

At the time, Mr. Marleau had not told his wife and family about his abuse. He had discussed it in the past with his friend C-96, who also alleged that he had been abused, although they did not discuss specifics.

The morning after seeing the article in the paper, Mr. Marleau called C-96. C-96 had read a similar article in a Montreal newspaper. After discussion, the two decided to come forward to the OPP with their allegations. As I noted previously, the fact that Mr. Marleau and C-96 decided to come forward after reading a newspaper article about Project Truth is one example of the positive impact broad media coverage can have.

Detective Constable Don Genier was assigned to contact Mr. Marleau and spoke with him on July 28, 1997. Mr. Marleau said that he had been abused by eight men and said the abuse occurred when he was between ten and sixteen years old. He also identified other potential victims: C-96, C-110, C-95, and another individual. Mr. Marleau and C-96 agreed to meet with the OPP in a few days and provide a statement. Detective Constable Genier advised Mr. Marleau not to discuss the allegations with the other victims or anyone else involved directly or indirectly in the investigation.

Initial Interviews of Claude Marleau and C-96

Mr. Marleau and C-96 met with Project Truth on July 31, 1997, and were interviewed separately.

C-96 provided a statement to Detective Constable Steve Seguin and described his alleged abuse by Harvey Latour and Roch Landry. C-96 also claimed that he was abused by an unidentified individual. I have heard no evidence about whether or not this individual was eventually identified. C-96 had difficulty recalling his exact age at the time of the abuse but said it began when he was between eleven and thirteen and continued until he was around fifteen.

Mr. Marleau's statement was taken by Detective Constable Genier. In it, Mr. Marleau identified Mr. Landry, Father Paul Lapierre, Father Donald Scott, Father Kenneth Martin, George Sandford Lawrence, Dr. Arthur Peachey, and Laurent Benoît as his alleged abusers. There was another alleged abuser whose name Mr. Marleau could not recall but whom he described as the priest in charge of the parish in Ingleside.

According to Detective Inspector Hall, the allegations of C-96 and Mr. Marleau were a significant development for Project Truth, particularly because they did not come from Constable Perry Dunlop's materials. Project Truth's decision to investigate these complaints is discussed in the section "Project Truth's Mandate." As I point out there, the Claude Marleau and C-96 complaints significantly increased the number of suspects under investigation.

Choice of Language of the Interviews

At the outset of Mr. Marleau's first interview with Project Truth, Detective Constable Genier advised Mr. Marleau that he would prefer to conduct the interview in English. The transcript of the interview reads:

MARLEAU: Going to do this in English, or?

GENIER: Yes, preferably ...

Mr. Marleau testified that he would have liked to have done the interview in French, but he acknowledged that he never told this to Detective Constable Genier. Mr. Marleau believes that the content of his first statement would have been different if he had been given the opportunity to speak French. He contends that he would have been able to give better descriptions and found it easier to express his emotions.

C-96's interview was also conducted in English as Detective Constable Seguin did not speak French. According to Detective Inspector Hall, Detective Constable Genier was the only person on the Project Truth team who spoke French fluently. Detective Inspector Hall said he could not recall "any statements being taken in French" and acknowledged that if he had received statements in French he would have needed to have them translated.

I find it unfortunate that only one bilingual officer, and no bilingual administrative staff, were assigned to this investigation, despite the fact that it was taking place in a bilingual community. I heard significant expert testimony on the stress associated with disclosing incidents of sexual abuse. Efforts must be made to ensure complainants are comfortable, and this includes conducting the interview in the language in which the alleged victim is most comfortable. The choice of language should be left with the complainant and not made for the convenience of the investigators.

Mistakes in Memory Made by Claude Marleau During His First Interview

By the time Mr. Marleau gave his first statement in 1997, approximately thirty years had passed since the alleged abuse occurred. He had never mapped out the entire sequence of events. Before they met with the Project Truth officers, Mr. Marleau and C-96 visited most of the places where they were allegedly abused.

Mr. Marleau testified that before giving his statement to Project Truth, he had put all the past abuse in a “drawer” for thirty years. Mr. Marleau described his initial statement as opening the drawer and beginning to unpack the various memories that he kept there. He believed at the time he had a good memory of events and places. However, he made a few mistakes with respect to the dates of the alleged incidents. He believes the mistakes were attributable to the fact that his story came out all of a sudden, and he said that once he was able to find some reference points, the memories were intact. These mistakes and changes in dates were later the subject of intense cross-examination during the course of the criminal proceedings.

Alain Godin, the Crown responsible for prosecuting some of Mr. Marleau’s alleged abusers, testified that when he reviewed Mr. Marleau’s statement, he noticed that Mr. Marleau referred to markers (such as where he lived, which school he attended, etc.) instead of referring to his age. Mr. Godin asked the officers to speak with Mr. Marleau’s mother and to obtain school and land registry records. This documentation helped Mr. Godin assess Mr. Marleau’s age at the time of the incidents. Mr. Godin further noted that this often happens in historical cases.

Wendy Harvey, an expert in the prosecution of child sexual abuse, suggests that before taking a statement, investigators should help complainants develop a plan to best recount their version of an event that took place years earlier. This may include collecting documents and photographs, and creating a timeline to provide some context for the incident they are trying to recall. According to Ms Harvey, a complainant’s

first responsibility is to reconstruct what transpired in as accurate a way possible, and because the human memory cannot do that on its own,

they will require some assistance with structured documents around issues of dates and that type of thing.

In my view, the steps recommended by Crown Godin and Ms Harvey are examples of techniques that can be of considerable benefit when investigating allegations of historical sexual abuse, and they should be incorporated into investigative protocols.

Identification of Father René Dubé

A few days after providing his statement to the OPP, Mr. Marleau contacted Detective Constable Genier and told him that he had forgotten to address one incident of abuse. Detective Constable Genier's notes state:

Marleau adds he forgot to mention one (1) accused; he had it written on the other side of his paper. His name is Father Deslaurier[s].
Marleau recalls one incident occurring in Montreal area at approx. age of 13/14 years.

On September 3, 1997, Mr. Marleau met with Detective Constable Genier in Montreal. During this second interview, Mr. Marleau described an incident where he alleged that he had been jointly abused in Montreal by Father Paul Lapierre and a priest whom Mr. Marleau identified as Father Deslauriers.

On October 19, 1998, Mr. Marleau told Detective Constable Genier that he believed it was another priest and not Father Deslauriers who had abused him in Montreal. Detective Constable Genier's notes state:

Spoke to Marleau about the Father Deslauriers issue. Marleau was speaking to his mother last evening and she believes the Priest responsible for abuse is not Deslauriers but Father Dubé.

Marleau stated years ago, he attended a wedding in Cornwall and was corrected by mom that the priest wasn't Deslauriers but Dubé.

Mr. Marleau had determined that the priest who presided over the wedding of a relative was the person who had allegedly abused him. Detective Constable Genier attended Nativity Church and asked for information about the wedding of Mr. Marleau's relative. He learned that the priest at this wedding was Father René Dubé.

On November 20, 1998, Mr. Marleau provided a formal statement to Detective Constable Genier regarding the name of the alleged abuser in Montreal.

Q: I understand, Mr. MARLEAU, that you realized the name of a priest that you disclosed to us was wrong. This correction applies to your disclosure involving Father DESLAURIERS. Could you tell me how you came to this conclusion?

A: After thinking back on that specific priest, I kept thinking that the name was wrong, but physically I always knew who he was. After talking to my mother, which was after the Montreal Urban Police had contacted me, I realized the Father I was talking about was not DESLAURIERS, but Father DUBÉ, because my mother lives in the parish and after I described the Father to her, she said it was Father DUBÉ because of the description I gave her.

...

Q: Do you know what Father DESLAURIERS looks like?

A: No, I've never met him. The mix up in the names came from my trying to get information from [C-96's mother], who lives in the parish. I was trying to recollect who served at Nativity Church in the late 70's, or early 80's, as that was the period I knew I had seen him again. [C-96's mother] with the information I provided, said it was Father DESLAURIERS that was there at that time. But I didn't give her a description at anytime, because I didn't want her to think that any of these questions were related to Project Truth. I spoke to [C-96's mother] the morning before I gave my video statement at Lancaster Detachment.

Detective Constable Genier went to Quebec City in order to have Mr. Marleau identify his alleged perpetrator in a photo line-up. Mr. Marleau selected the picture of Father René Dubé.

The allegations about the incident involving Father Dubé and Father Paul Lapierre were eventually turned over to police in Quebec.

Identification of Father Hollis Lapierre

On October 20, 1998, Detective Constable Genier met with Mr. Marleau and showed him a statement from someone who said they could help identify the priest at Our Lady of Grace Parish in Ingleside during the relevant time period, as well as a photo of the parish priest. As a result, Mr. Marleau provided a statement and identified Father Hollis Lapierre as the unknown priest first mentioned in his July 31, 1997, statement. He told Detective Constable Genier that Father Paul Lapierre had informed him a few years previously that the priest from Ingleside was dead. Father Hollis Lapierre had in fact died in 1975.

Preparation of Crown Briefs and Crown Opinion

Following their investigation, the Project Truth officers prepared Crown briefs for complaints against Roch Landry, Father Paul Lapierre, Father Kenneth Martin, George Sandford Lawrence, Dr. Arthur Peachey, and Harvey Latour. The other suspects identified by Mr. Marleau and C-96 either were dead or the allegations against them had been turned over to Quebec police. Crown Attorney Robert Pelletier received these briefs on April 1 and 3, 1998.

On May 7, 1998, Crown Pelletier provided Detective Inspector Smith with an opinion on the allegations in the Crown briefs. Mr. Pelletier recommended that the charges against Mr. Latour proceed and had “no hesitation whatsoever in recommending charges against Roch Joseph Landry” and Father Paul Lapierre. Crown Pelletier noted that consent was a live issue in the cases involving Dr. Peachey, Father Martin, and Mr. Lawrence. He recommended that these cases proceed to a preliminary inquiry, after which they could determine whether the merits and public interest were sufficient for the various accused to be committed to trial. Crown Pelletier noted that Mr. Marleau was not “challenged specifically on the issue of consent” in his statements, although “the general tenor of Marleau’s statement is such that he was not a fully willing participant.” Crown Pelletier further noted that Mr. Marleau should be advised of the difficulties with the prosecutions in order to obtain his fully informed view on the matter.

Follow-Up on the Consent Issue

After receiving the Crown opinion, Detective Constable Seguin called Mr. Marleau on May 13, 1998, and asked about consent. Detective Constable Seguin’s notes describe the conversation as follows:

Asked about issue of consent. He advised that in all situations it was influenced consent. The way it’s brought upon you. These are people in control. With the stuff you’re given, it’s like you’re lured into it because of the stuff and treatment you get there that you don’t get at home.

According to Mr. Marleau, during this conversation there were no follow-up questions or questions about his relationship with the priests.

On May 19, 1998, Detective Constable Seguin called Mr. Marleau again and asked him questions relating to the Crown’s concerns about consent, particularly in relation to Dr. Peachey and Father Martin. According to Mr. Marleau, Detective Constable Seguin was interested in consent in a very narrow and technical sense rather than looking at the broader relationship he had with his alleged abusers.

Mr. Marleau understood that in the criminal trials, a lot revolved around legal definitions of consent. According to Mr. Marleau, not many people at the trial understood that the events at age seventeen were connected to the events at age eleven; it was for him a connected chain of events. It appears that Mr. Marleau was trying to explain that the connection between these events undermined any appearance of consent.

As I have previously noted, Detective Constable Seguin did not have specific training on sexual abuse. Such training would have helped him understand how victims can be groomed, thus making them appear to agree to acts of abuse when in reality their consent is vitiated by the psychological or financial manipulation employed by their abusers. In hindsight, had Detective Constable Seguin understood this principle, he would have been able to ask more targeted questions in order to obtain evidence of grooming and undermined consent. This incident underscores the need for officers to be properly trained on sexual abuse and to have this training updated periodically.

Delay in Laying Charges Against Alleged Perpetrators

Mr. Marleau and C-96 first gave statements in July 1997. The Crown briefs were submitted in April 1998, and a Crown opinion followed in early May 1998. However, no charges were laid until July 1998. The Project Truth officers advised Mr. Marleau that there were problems in assigning a Crown because the local Crown had a conflict of interest. It had been decided that local Crown attorney Murray MacDonald would not take on Project Truth prosecutions because of the allegations that were made against him in the Fantino Brief.

On the other hand, Detective Constable Seguin noted that he could not explain the delay of almost a year between the initial complaint and the actual charge, except to say that the decision when to lay charges was not his to make.

Detective Inspector Hall testified that when a number of arrests were to be made, it is the OPP's normal practice to do them all at once:

You're not going to do one this week, one the next week. We were doing it grouped because of the heightened interest in the community, and we wanted to make a press release and we knew there would be lots of discussion over it.

Detective Inspector Smith agreed that in special projects it is not unusual to do all the arrests on one day, issue a press release, and set the same court date for all the accused. According to Detective Inspector Smith, as of June 1998, the OPP were ready to arrest a number of suspects and were waiting for a Crown to be assigned to Project Truth.

Detective Inspector Smith and Crown Pelletier set a date of July 9, 1998, for charges against a number of suspects. Detective Sergeant Hall advised Bishop Eugène LaRocque about the scheduled arrests. The Bishop was to contact the clergy members who were to be arrested and request that they report at a certain time and location in lieu of an arrest warrant. Detective Inspector Hall testified that there were no complaints from alleged victims when arrangements were made to have alleged perpetrators come in themselves. He believed that the officers dealing with the victims explained the procedure and it was accepted.

Simultaneous Arrests of Alleged Perpetrators

In the month preceding the planned arrests, two suspects, in cases unrelated to Mr. Marleau and C-96, committed suicide. As discussed in the following sections, Richard Hickerson and Nelson Barque took their lives on June 19 and June 28, 1998, respectively. Both were to be charged on July 9, 1998.

Detective Inspector Smith mentioned during his testimony that in other cases he worked on in the past, often victims would commit suicide. He noted:

In this case, it's the opposite, although we had I think two attempt on victims, but now all of a sudden, because of media attention and everything else I've got—I've got suicides all over the place.

And as a police officer, you're sworn to protect life and property. What do I do to protect life? ... We don't have a death sentence in this country, but just the mere mention that somebody may be a paedophile or is going to be arrested, is a death sentence to some of them, and that bothered me.

And you know, how can I do my job at the same time make the arrests that I have to but what can I do to maybe stop these people from taking their lives ... that wore on all of us, you know.

Detective Inspector Smith was concerned about the suicides and wanted to prevent others. He had a discussion with Crown Attorney Murray MacDonald on June 30, 1998, about this issue.

Project Truth planned to arrest six other individuals on July 9, 1998. The suspects were asked to turn themselves in to the OPP, and all but one attended as planned. When Harvey Latour failed to attend and could not be reached by telephone, Detective Sergeant Hall asked the officers to go to his residence. On their arrival they discovered that Mr. Latour was attempting suicide. They obtained a key from the superintendent and called an ambulance. It was later

determined that Mr. Latour had overdosed on Tylenol. He was arrested a few days afterwards.

Detective Constable Seguin had been in contact with Roch Landry's wife several months earlier to find out about Mr. Landry's state of mind, as there were concerns about suicide.

The Project Truth officers' attempts to prevent suicides among the alleged perpetrators demonstrate the concern they had for everyone involved in the investigations. They responded to problems when they had the knowledge and the ability to do so. I believe that they would have dealt with victims with an equal amount of sensitivity and diligence had they had more training on the particularities of historical sexual abuse victims.

Claude Marleau's Contacts With Constable Perry Dunlop

Mr. Marleau first heard of Constable Dunlop when he read the article in *Le Soleil* in July 1997. The newspaper reported the problems that Constable Dunlop had with the Cornwall Police Service. Mr. Marleau contacted Jackie Leroux, the author of the article, and Ms Leroux told him about a lawyer named Charles Bourgeois who was representing Constable Dunlop in a civil case. Mr. Marleau contacted Mr. Bourgeois and told him that he was a lawyer for victims of child sexual abuse in Cornwall rather than a victim himself.

According to Mr. Marleau, a few weeks after making his initial statement to the OPP, he received a call from Constable Dunlop. Constable Dunlop said that he had obtained his telephone number from Mr. Bourgeois. Mr. Marleau once again presented himself as a lawyer representing victims. Constable Dunlop offered to send him copies of court proceedings, a scrapbook of newspaper articles, and a copy of the *Fifth Estate* video. Mr. Marleau received the documents on December 2, 1997, and sent a cheque in the amount of \$80 for expenses.

In fall 1998, the question of Mr. Marleau's contacts with Constable Dunlop was raised by defence counsel in prosecutions of Mr. Marleau's alleged perpetrators. On October 25, 1998, Mr. Marleau prepared a statement in which he detailed his contacts with Helen and Perry Dunlop. The Project Truth officers asked Mr. Marleau to refrain from further contact with the Dunlops.

Mr. Marleau testified that he received a call from Constable Dunlop on one occasion after providing his statement. He told Constable Dunlop that he had been advised by the police not to speak with him. Mr. Marleau testified that Constable Dunlop did not seem surprised by this and they had no further contact.

Detective Sergeant Hall questioned the Dunlops about their contacts with Mr. Marleau on November 16, 1998. This conversation is described in greater detail in the section "Interactions Between Project Truth and Constable Perry Dunlop."

The Links Among Alleged Abusers of Claude Marleau

Mr. Marleau testified that the men who abused him, with the exception of Laurent Benoît and Father René Dubé, all knew one another. Roch Landry was the first alleged abuser; he introduced Mr. Marleau to Father Paul Lapierre. Father Paul Lapierre introduced him to Father Donald Scott, Father Hollis Lapierre, George Sandford Lawrence, Father Dubé, and Father Kenneth Martin. Mr. Lawrence introduced him to Dr. Peachey. Mr. Marleau met Mr. Benoît independently, but Mr. Benoît employed Mr. Landry. To his knowledge, Father Dubé knew only Father Paul Lapierre. According to Mr. Marleau, it was clear that some of the alleged abusers communicated with each other and talked about him.

Detective Inspector Hall testified that he completed an analysis of the suspects in the Marleau case and concluded that they were not all known to each other despite the common victim. According to Detective Inspector Hall, a ring is a group of people who all know each other and operate in concert. He said, “This wasn’t the situation here.” I discuss Project Truth’s linkage analysis further at the end of this chapter.

Communication Between the OPP and Quebec Authorities

Detective Inspector Hall testified that he and Detective Constable Genier went to the Montreal police headquarters and spoke with an inspector there regarding the incident of abuse that allegedly occurred in Montreal. They provided a copy of the interview reports, and the Montreal police took over the matter. Detective Constable Genier worked with the assigned investigator and made several trips to Montreal for court appearances.

Claude Marleau’s Perception of Treatment by the OPP

Mr. Marleau testified that the Project Truth officers whom he dealt with did not appear to have specialized training in historical sexual offences. He contrasted his dealings with the OPP and the Montreal police. He noted that the Quebec officer he dealt with specialized in sexual offences and had a better approach. Mr. Marleau said he did not feel judged by the Quebec officer, while the approach and techniques of the OPP officers intimidated him and made him feel like his credibility was being questioned.

Outcome of the Prosecutions

The only conviction obtained based on the allegations of Mr. Marleau and C-96 was Father Paul Lapierre; he was found guilty by a court in Quebec and sentenced to twelve months imprisonment followed by a period of probation of three years.

Father Dubé was acquitted of the charges in Quebec.

In Ontario, Father Lapierre was found not guilty of the charges laid by the OPP. Mr. Latour, Mr. Lawrence, and Father Martin were also acquitted of the charges against them.

Mr. Landry and Dr. Peachey died before their trials, and the charges against them were withdrawn.

These prosecutions are described in detail in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Investigation of Richard Hickerson

Richard Hickerson worked as an employment counsellor for Canada Manpower. He had frequent interactions with probation officers Ken Seguin and Nelson Barque because he was often asked to help individuals on probation and parole find work. Mr. Hickerson also volunteered at the École Musica in Cornwall, where he acted as a “coach” for violin students. Previously, Mr. Hickerson had been a priest in Manitoba, but he left the priesthood around 1965, after the Bishop of his Diocese became aware of a “sexual incident” between Mr. Hickerson and a teenaged altar boy. He left and came to Cornwall in 1968. His background is more fully described in Chapter 6, on the institutional response of the Cornwall Community Police Service.

In the course of Project Truth, three complainants alleged sexual abuse by Mr. Hickerson. Detective Constable Don Genier was the lead investigator.

Complaints Against Richard Hickerson

On October 7, 1997, C-11 contacted Detective Constable Joe Dupuis to make a complaint regarding Mr. Hickerson. When C-11 was twelve or thirteen years old and in grade 8, he took music lessons at École Musica. Mr. Hickerson was a volunteer with the school’s orchestra and would coach some students individually at his apartment. C-11 alleged that during these coaching sessions Mr. Hickerson sexually abused him repeatedly over several years. C-11 also alleged that Mr. Hickerson had “an extensive pornography collection, ... including child pornography.”

A second complainant, Keith Ouellette, came to the attention of Project Truth on October 10, 1997. Detective Constable Dupuis received a call from probation officer Jos van Diepen advising him that Mr. Ouellette had complained that he had been sexually assaulted by Mr. Hickerson, Ken Seguin, and Chris Wilson. Mr. Ouellette was interviewed by Detective Constables Dupuis and Steve Seguin on October 30, 1997. He told the officers that Ken Seguin was his probation officer when he was around eighteen or nineteen years old. Mr. Ouellette said that

Mr. Seguin sent him to Manpower to see Mr. Hickerson. He alleged that Mr. Hickerson had sexually abused him on multiple occasions.

Mr. Ouellette spoke with Constable Perry Dunlop a few weeks after he provided the statement to the Ontario Provincial Police (OPP) and met with him in 2000, just before the Dunlops moved to British Columbia. Mr. Ouellette claimed that he spoke with Constable Dunlop several times over the phone to set up meetings, but that he never attended these meetings. This appears to be Constable Dunlop's only involvement in the Hickerson case.

Finally, on May 11, 1998, the OPP learned from C-90 that Robert Sheets might also have been a victim of Mr. Hickerson. Detective Constable Genier took a statement from Mr. Sheets on June 2, 1998. Mr. Sheets alleged that Mr. Hickerson and Mr. Barque sexually abused him. When he was fourteen or fifteen years old, Mr. Hickerson was assigned to be Mr. Sheets' Special Needs Counsellor and to assist Mr. Sheets in finding a job. Mr. Sheets alleged that Mr. Hickerson would bring him to his place, give him alcohol and money, and sexually molest him. He said that this sexual abuse went on for two or three years and that he kept going back because he needed Mr. Hickerson's help to find employment. Mr. Sheets also referred to Mr. Hickerson's collection of pornography, alleging that Mr. Hickerson made him watch male homosexual pornographic movies.

Caution and Release of Richard Hickerson

On June 11, 1998, Detective Constables Genier and Dupuis took a cautioned statement from Mr. Hickerson. Mr. Hickerson admitted to having had a sexual relationship with C-11 and also acknowledged a "sexual incident" with an altar boy when he was still a priest. He said:

Let's face it, when you're gay and there's boys all around. I'm not into pre-pubescent boys, but as they reach to age of puberty I start to get attractive to them. Let's say twelve, thirteen to twenty-five years. It's a "ephebophile." (it's an adolescent that reached puberty.)

Mr. Hickerson denied having a pornography collection, and the OPP did not obtain a search warrant to follow up on the allegations of possession of child pornography. Nor did the Project Truth officers inform Project P, the OPP's child pornography section, of these allegations.

Despite his inculpatory statements, Mr. Hickerson was not arrested immediately. Instead, he was told that the OPP would be in touch within a few weeks. Detective Inspector Hall testified that Mr. Hickerson was among the group of suspects Project Truth planned to arrest on July 9, 1998.

Richard Hickerson Death Investigation

Mr. Hickerson committed suicide on June 19, 1998. Constable Jeff Carroll of the Cornwall Police Service investigated his death. A search was conducted of Mr. Hickerson's residence pursuant to a warrant issued by the Coroner, and the Cornwall police discovered a large quantity of pornographic material, including magazines and videos. The investigation is described in Chapter 6.

Problems With Investigation and Delay of Arrest

I am concerned that the OPP did not take steps to interview Mr. Hickerson, or search his residence, in the fall of 1997 after C-11 and Mr. Ouellette made complaints. It may be that the investigators were simply too busy or were attempting to gather further evidence before approaching Mr. Hickerson. Although Mr. Hickerson did not have a prior conviction, allegations of sexual abuse from more than one alleged victim and additional allegations of possession of child pornography should be investigated more quickly.

It is clear that the OPP could have done more to pursue the allegations of possession of child pornography. In his testimony, Detective Inspector Hall suggested that the OPP would not have had sufficient grounds to obtain a search warrant, in part because C-11's allegations were historical. I am unconvinced. The Cornwall Police Service was able to obtain a search warrant for Marcel Lalonde's residence based on historical allegations that he was in possession of child pornography, and the OPP should have attempted to do the same in the case of Mr. Hickerson. Moreover, in addition to C-11's allegations, the OPP eventually had Mr. Hickerson's own admission made during his statement that he was sexually attracted to, and had been sexually involved with, young teenage boys.

I am also concerned by the almost month-long delay between obtaining Mr. Hickerson's inculpatory statement and the planned date for arrest. Arrangements had been made by Project Truth to make a number of arrests and issue a press release on July 9, 1998. Detective Inspector Smith testified that this practice was not unusual in special projects. While mass arrests may not be uncommon, and may even be necessary in certain situations, such as drug busts or gang activity, I fail to see the reason for delaying the arrest of historical sexual abuse suspects. I find this practice inadvisable where suspects have made inculpatory statements and are aware that they are likely to be arrested, particularly in high-profile cases involving allegations of sexual abuse.

Project Truth Investigation of Nelson Barque

As discussed in other chapters and earlier in this one, Nelson Barque was investigated on several occasions: by the Ministry of Correctional Services in

1982, and jointly by the Cornwall Police Service (CPS) and the Ontario Provincial Police (OPP) in 1994. Following the 1994 investigation, Mr. Barque pleaded guilty to indecent assault and was sentenced to four months incarceration and eighteen months probation in relation to the abuse of Albert Roy.

Complaints Against Nelson Barque

The OPP's second investigation of Mr. Barque began in 1997 as part of Project Truth. Detective Constable Don Genier led the Project Truth investigation into allegations of sexual abuse by former probationers of Mr. Barque. On January 27, 1997, Detective Constable Genier received a call from C-45, who made allegations against Ken Seguin, Mr. Barque, and Marcel Lalonde. In a statement to Detective Constables Joe Dupuis and Steve Seguin on October 3, 1997, C-45 claimed that when he was fifteen years old, Mr. Seguin and Mr. Barque touched and measured his penis in Mr. Barque's office as part of a probation "pre-sentence report."

Project Truth learned of another possible victim, Robert Sheets, after speaking to C-90 on May 11, 1998. On June 2, 1998, Detective Constable Genier took a statement from Mr. Sheets. Mr. Sheets alleged that both Mr. Barque and Richard Hickerson had sexually abused him. He claimed that he was introduced to Mr. Barque by C-44 when he was about eighteen years old. Initially, Mr. Seguin was Mr. Sheets' probation officer, but Mr. Barque became his probation officer in January 1982. Mr. Sheets alleged that Mr. Barque gave him money and alcohol in breach of his probation conditions and that a sexual relationship ensued. A few of these incidents allegedly occurred at Mr. Seguin's residence. Mr. Sheets claimed that Mr. Seguin was not home at the time, but he left "a gay movie" set up for them. Mr. Sheets also claimed that the abuse began after he told Mr. Barque about his sexual contact with Mr. Hickerson.

This is the third time that public institutions became aware that Mr. Barque might have had sexual contact with Mr. Sheets. These allegations surfaced in the Ministry of Correctional Services' 1982 investigation into Mr. Barque, and again in 1994, when OPP Detective Constable William Zebruck was investigating Mr. Barque for his abuse of Albert Roy. These investigations are discussed in detail in previous sections of this Report.

Caution and Release of Nelson Barque

Mr. Barque provided Detective Constables Genier and Dupuis with a cautioned statement on June 18, 1998. Mr. Barque admitted that he engaged in sexual activities with Mr. Sheets when he was a probationer and estimated that these took place over one to one-and-one half years. He said that at the time he was under

the impression that Mr. Sheets was eighteen or nineteen years old but that it was possible he was younger. Mr. Barque did not recall having sex with Mr. Sheets at Mr. Seguin's residence.

Mr. Barque also admitted to having a sexual relationship with C-44 and Mr. Roy. When asked if there was anyone else, Mr. Barque replied, "Not that I recall. In my mind there was only three." When asked generally if he had any sexual contact with C-45, he denied it.

Despite the admissions made in his statement, Mr. Barque was not arrested on June 18, 1998. Detective Inspector Hall testified the officers had reasonable and probable grounds for the arrest but the OPP's intention was to arrest Mr. Barque on July 9, 1998, along with several other suspects. However, Mr. Barque committed suicide on June 28, 1998.

Concerns About Delay

I am concerned about the delay in investigating allegations against Mr. Barque from June 1997 onwards. He had been convicted of similar charges in 1995, yet little priority seems to have been applied in investigating him again. In addition, as I commented in relation to the investigation of Mr. Hickerson, I believe it was inadvisable for Project Truth to delay the arrest of suspects in relation to serious charges involving the sexual abuse of young people, after those suspects made inculpatory statements in cautioned interviews.

Investigation of Brother Leonel Romeo Carriere

Brother Leonel Romeo Carriere was a retired teacher from the St. Joseph's Training School in Alexandria. He was also identified by the name Brother George Edmond. Detective Constable Don Genier was the officer in charge of investigating Brother Carriere.

In the fall of 1997, Detective Constable Genier took statements from C-105 and C-106. Both said Brother Carriere abused them when they were between the ages of eleven and thirteen. The alleged abuse took place while they were studying at St. Joseph's between 1954 and 1956.

Detective Constables Genier and Joe Dupuis took a cautioned statement from Brother Carriere on March 11, 1998.

On April 1, 1998, the Ontario Provincial Police (OPP) submitted a brief to the Crown. In his opinion to Detective Inspector Smith, dated May 7, 1998, Crown Attorney Robert Pelletier expressed concern that it might not be in the public interest to prosecute Brother Carriere because of his age, seventy-seven, and the dated nature of the alleged offences. However, Crown Pelletier recommended that the matter proceed at least to a preliminary inquiry if Detective Inspector

Smith felt there were reasonable and probable grounds and that the public interest would be served.

Brother Carriere was arrested on July 9, 1998, and charged with two counts of indecent assault on a male.

The preliminary inquiry took place before Justice G. Renaud on May 31, 1999, and Brother Carriere was committed to stand trial on both charges. On January 13, 2000, Justice P. Lalonde granted a stay of proceedings, finding that Brother Carriere, who had suffered multiple strokes in recent years, would be unable to present a whole and complete defence at trial because of his mental deficits. This issue is further discussed in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Investigation and Prosecution of Jacques Leduc

Complaints about sexual abuse by Jacques Leduc were first reported in April 1998. Project Truth conducted an investigation, and Mr. Leduc was arrested on June 22, 1998. He was ultimately tried on charges relating to three complainants. His first trial ended in a stay of proceedings due to wilful non-disclosure of information relating to contact between Constable Perry Dunlop and one of the complainant’s mothers. The Crown successfully appealed that decision, but a further stay was granted during Mr. Leduc’s retrial due to delay. The Court decided that Mr. Leduc had not been tried within a reasonable time, in violation of his rights under the *Charter*.

First Complaint to Ontario Provincial Police

Allegations about sexual abuse against Cornwall lawyer Jacques Leduc surfaced in April 1998. The first alleged victim to come forward was C-16. A report was made on April 8, 1998, to Detective Constable Verne Gilkes in the Hawkesbury Detachment by a friend of C-16’s family. C-16 was interviewed by Constable Charlene Davidson at the Lancaster Detachment on May 7, 1998. C-16 was twenty-one years old at the time of the interview. He alleged that Mr. Leduc began sexually abusing him shortly after he started doing outdoor work for Mr. Leduc when he was fifteen years old. C-16 said the incidents occurred every time he worked for Mr. Leduc.

On May 8, 1998, Constable Davidson gave C-16’s statement to Detective Constable Joe Dupuis and asked whether this case fell within the Project Truth mandate. Detective Constable Dupuis called Detective Inspector Tim Smith, who decided the allegation did fall within the mandate. Project Truth took over the investigation into C-16’s allegations. Constable Davidson contacted C-16 to advise him that the investigation had been turned over to Project Truth.

Investigation of C-16's Complaint

Detective Constable Dupuis, the lead investigator on the case, and Detective Constable Steve Seguin conducted a videotaped interview of C-16 on May 11, 1998. In this statement, C-16 stated he began working for Mr. Leduc when he was thirteen years old. He said the abuse started less than a year after he began working for Leduc and continued until he was about eighteen or nineteen years old. C-16 told the officers about other young people who had worked for Mr. Leduc, in particular C-23, C-17, and another individual.

Detective Constable Dupuis interviewed C-16's mother on May 13, 1998. The officer explained that he does not always interview complainants' mothers but interviewed C-16's mother to corroborate his statement. She confirmed that C-16 was twelve, about to turn thirteen, when he began working for Mr. Leduc. She said the first incident of alleged abuse took place during the second summer that C-16 worked for Mr. Leduc, when C-16 was thirteen years old. C-16's mother told the officer that Mr. Leduc gave her son clothing, including expensive cowboy boots, paid for braces for his teeth, and would let C-16 borrow his car whenever he wanted it.

Detective Constable Dupuis interviewed C-16 a second time on July 28, 1998. During this interview, C-16 provided further details about his alleged abuse. As I have discussed in earlier chapters, incremental disclosure is not unusual for victims of child sexual abuse.

Investigation of Allegations by C-17 and C-23

Detective Constables Seguin and Dupuis interviewed C-17 on May 13, 1998. At the time of the interview, C-17 was seventeen years old. He told the officers that he had been working for Mr. Leduc since December 1995 and had worked for him as recently as one week before. He alleged that Mr. Leduc first abused him after they went deer hunting in the fall of 1997. Throughout the interview, C-17 had difficulty describing the abuse, in part because of language issues. C-17 had trouble finding the English words for what he was trying to describe. Neither of the officers could speak French fluently. They did invite C-17 to use the French words and they would "figure it out."

It is unfortunate that this interview was not conducted in French. As I discuss in the section "Investigations of Complaints of Claude Marleau and C-96," disclosing incidents of sexual abuse can be extremely stressful for victims, and efforts should be made to ensure they are comfortable. In my view, this should include, at minimum, conducting the interview in the language in which the complainant is most comfortable.

C-17 alleged that he was abused by Mr. Leduc approximately ten times. He also told the officers that Mr. Leduc gave him some clothes and would let him

drive his car. He said a friend of his had just started working for Mr. Leduc and gave the name of another friend who used to work for him. C-16 had also provided the officers with the latter name. Both of these individuals were interviewed by the Ontario Provincial Police (OPP) and became potential witnesses for the charges involving C-17.

C-17 was interviewed again on June 9, 1998. He provided some additional details about how he had come to work for Mr. Leduc and the incidents of alleged abuse.

The Project Truth officers also took two statements from C-23, on May 25 and July 22, 1998. C-23 told the officers that he had sexual contact with Mr. Leduc but said that it was consensual. He also said that he and Mr. Leduc engaged in sexual acts with another individual, C-22. As I explain below, the officers later interviewed C-22 and Mr. Leduc was eventually charged in relation to allegations made by him. The Crown intended to call C-23 as a similar fact witness in Mr. Leduc's trial.

Constable Perry Dunlop's Conversation With C-16's Mother

On June 15, 1998, Detective Constable Dupuis visited C-16's home to pick up a videotape dealing with victim support. C-16's mother advised him that she had received a call from Constable Perry Dunlop, who wanted to know how the investigation was proceeding. Detective Constable Dupuis told her not to discuss anything with Constable Dunlop while the investigation was ongoing. He did not ask her any questions about the phone call or whether she had any previous contact with Constable Dunlop. He did make a note of this in his notebook.

When Detective Constable Dupuis returned to the Project Truth office he made a general comment about the phone conversation between Constable Dunlop and C-16's mother, but at the hearings, he could not recall who was in the office at the time. Detective Inspector Hall remembered overhearing Detective Constable Dupuis say something to the effect of "[W]ell, Dunlop is contacting victims again." Detective Inspector Hall does not think Detective Constable Dupuis told him he had just come from C-16's residence. At some point, Detective Inspector Smith was briefed on the fact that Constable Dunlop spoke with C-16's mother.

Sometime during the week of June 15, 1998, Detective Inspector Smith and Detective Sergeant Hall discussed the contact between Constable Dunlop and C-16's mother, and they met with Constable Dunlop on July 23, 1998. During this meeting, Detective Inspector Smith brought up the call to C-16's mother because he had previously asked Constable Dunlop not to contact victims or witnesses. Detective Inspector Smith did not make a note of this topic, probably, he testified,

because he was more concerned about the issue of disclosure and felt this was a “side issue.” At this meeting, the OPP learned that Constable Dunlop had delivered four binders of materials to a number of government bodies and that these materials had not been forwarded to the OPP. This issue is further discussed in the section “Constable Perry Dunlop and Disclosure to the OPP.”

Detective Inspector Hall explained that he did not know Detective Inspector Smith was going to bring up the contact with C-16’s mother, and said he did not make a note of it because, “I just make notes usually on what I speak on if I think it’s appropriate.” However, earlier in his testimony, when Detective Inspector Hall described his note-taking practices, he said that he made sufficient notes to capture the “gist of the conversation” and also that he mostly wrote down what other people told him, rather than what he told them. Neither Detective Inspector Smith nor Detective Sergeant Hall made a note about the contact between Constable Dunlop and C-16’s mother either after hearing about it from Detective Constable Dupuis or during the July 23, 1998, meeting with Constable Dunlop. Given their concerns about Constable Dunlop’s contacts with witnesses, something should have been noted.

Constable Dunlop mentions this topic in a will-state he prepared in early 2000:

Inspector Tim Smith wants to know about [C-16’s mother]. I stated that I spoke to her and directed her to Project Truth. Inspector Tim Smith indicated that I called her back. Three weeks later I called [C-16’s mother] back out of concern she was very upset the first time she called me. Out of concern that a normal caring person has I called her back to make sure she was O.K.

Constable Dunlop’s will-state also refers to his initial contact with C-16’s mother on May 8, 1998, when he referred her to Project Truth.

The conversation between Constable Dunlop and C-16’s mother did not strike Detective Sergeant Hall as particularly significant because the officers knew that Constable Dunlop was contacting witnesses and it was not unusual to find out that he had talked to someone. Detective Inspector Hall explained that when this was discussed with Constable Dunlop on July 23, 1998, he said that he was following up to see how C-16’s mother was doing. There was no indication of contact with the complainant.

Detective Constable Dupuis’ note of this contact was not disclosed to the defence, and he never informed Crown Shelley Hallett, who was assigned in July 1998 to prosecute the matter, about the telephone conversation between C-16’s mother and Constable Dunlop. As will be discussed below, C-16’s mother

testified about her contacts with Constable Dunlop during Mr. Leduc's trial, at which point the non-disclosure of this information to the defence became a very significant issue.

Jacques Leduc's Contact With Victims

During the course of the investigation by Project Truth officers, Mr. Leduc maintained contact with some of his alleged victims. On May 12, 1998, Mr. Leduc showed up at C-17's home while Detective Constable Dupuis was there discussing C-17's allegations. Detective Constable Dupuis believed this was merely a coincidence. Mr. Leduc had not been arrested, and Detective Constable Dupuis had no reason to believe that he would be aware of the investigation. On May 27, 1998 while Detective Constable Dupuis was interviewing another potential witness, Mr. Leduc called the residence asking this individual to come do some work for him. Again, Detective Constable Dupuis felt this was a coincidence. Given that both C-17 and the other individual had recently worked for Mr. Leduc, and that I did not hear any evidence of Mr. Leduc attempting to interfere in the investigation, I am inclined to agree with Detective Constable Dupuis that his contact was coincidental. However, it was probably disconcerting to the officers as it indicated a potential for ongoing abuse.

C-17 Receives a Death Threat

On July 13, 1998, C-17's mother provided Detective Constable Dupuis with an envelope containing a death threat that stated, "You're dead meat, faggot." C-17's mother asked Detective Constable Dupuis to investigate this threat. The letter was sent to the OPP in Long Sault to examine it for fingerprints, but none were recovered from the envelope. The OPP were never able to identify who sent the envelope.

Investigation of C-22's Allegations

As mentioned above, C-23 told the officers that he and Mr. Leduc had a "three-some" with C-22. Detective Constable Dupuis contacted C-22 on May 28, 1998, and he said he had worked for Mr. Leduc when he was fourteen years old. On June 2, 1998, Detective Constables Dupuis and Seguin went to C-22's house and asked him to provide a statement. According to Detective Constable Dupuis' notes, C-22 "stood with his head down" while talking to the officers. He said he had a baseball game later that evening and had not yet had dinner. There were people in the house and he did not want to do the interview there. Detective

Constable Dupuis noted that C-22 was “reluctant” to speak to them. C-22 suggested that something had occurred while he was working for Mr. Leduc but said he “did not want to talk about it, did not want his name in the paper, or want to go to court.”

After the officers explained that they needed his help, C-22 agreed to speak to them and went to get his shoes. Another person came out of the house and said that C-22 did not want to speak to the police and that he was dealing with it himself. Detective Constables Dupuis and Seguin told this unidentified person that if C-22 would not talk to them, they would subpoena him to appear in court anyway.

Detective Constables Seguin and Dupuis tried again on July 30, 1998, to obtain a statement. By this date, Mr. Leduc had been charged for allegedly abusing C-16 and C-17. Although C-22 still did not want to give a formal statement, he did provide information that led the officers to believe that he was potentially a victim of Mr. Leduc. He said he had worked for Mr. Leduc for three years and had a sexual experience with him and another individual twice. Although he never received gifts from Mr. Leduc, C-22 did not have to pay legal fees for the drafting of his will, a power of attorney, or the purchase of his house.

C-22 stated that he did not want to go to court or provide a statement. He believed the police had enough people and did not need him. The officers then told C-22 that he would be “subpoenaed anyways.”

Detective Constable Dupuis acknowledged during testimony that he should not have told an alleged victim that he would be subpoenaed. Detective Constable Seguin admitted that there “could have been a better way of delivering” that message. I appreciate the officers’ acknowledgment of their error. It is, of course, not appropriate to threaten a reluctant alleged victim with a subpoena. In this case, C-22 was threatened twice, first through a third party and then directly. C-22 provided more information during his second interaction with the OPP than he had in the first and eventually provided a full statement. Patience rather than coercion is a more appropriate, and probably more fruitful, tactic to encourage a reluctant potential complainant.

On November 24, 1998, Detective Constables Dupuis and Seguin again went to C-22’s residence in the hope that he would be willing to assist them. Crown Attorney Shelley Hallett accompanied them. She spoke to C-22 and convinced him to provide a statement. According to Detective Constable Dupuis, it was unusual for Crown Hallett to be involved at this stage of the investigation, but he did not suggest that it was improper. Crown Hallett’s involvement in convincing C-22 to provide a statement is discussed further in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

C-22 accompanied the officers to the Long Sault Detachment, where they conducted a videotaped interview. C-22 said that he was fourteen when he met Mr. Leduc. He had been charged with a criminal offence and Mr. Leduc represented him. He began working for Mr. Leduc while he was on probation. He recalled C-23 working for Mr. Leduc around the same time. C-22 alleged that Mr. Leduc began sexually abusing him about one year after he started working for him and that there were four incidents of abuse.

Detective Constable Dupuis and Crown Hallett met with C-22 again on March 24, 1999, to review his previous statement. After reviewing it, C-22 said he had left some things out. As a result, Detective Constable Dupuis conducted an additional videotaped interview with C-22. During this statement, C-22 said there were closer to fifty incidents of abuse. He said he did not tell the police this earlier because he was nervous, scared, and felt that he owed Mr. Leduc: “He’s done a lot of work for me that he hasn’t charged me for, and I feel that I owe him a lot. He’s like a father figure to me in my life.”

He also said that the abuse started approximately one month, rather than one year, after he started working for Mr. Leduc.

OPP Meets With Children’s Aid Society About Leduc Victims

On May 21, 1998, Detective Inspector Smith and Detective Sergeant Hall met with Richard Abell, executive director, and Bill Carriere, Director of Client Services and Protection Services, at the Children’s Aid Society (CAS). They discussed the complaints against Mr. Leduc and the ongoing investigation. Detective Inspector Hall explained that the officers went to the CAS pursuant to their duty to report under the *Child and Family Services Act*. Although at this time the two willing complainants, C-16 and C-17, were over sixteen years of age, the OPP officers were reporting to the CAS because they had concerns about young people under sixteen potentially being at risk. The fact that there were current allegations against Mr. Leduc was a “live issue” for the officers.

Detective Inspector Hall testified that as of May 21, he was not aware of any young people who were employed by Mr. Leduc, but the officers were concerned about the upcoming end of school year and the possibility that Mr. Leduc might hire other youths for the summer. This was a legitimate concern, and the OPP were correct to inform the CAS of its investigation of Mr. Leduc. This said, the officers did not inform the CAS as soon as they became concerned that Mr. Leduc might currently be putting children at risk. It would have been prudent for the OPP to have reported to the CAS sooner.

According to Detective Inspector Hall, one purpose of the meeting was to share information, and he believes the CAS was given the names of the complainants, although perhaps not that day. Mr. Abell and Mr. Carriere testified they did not recall receiving the names of the complainants. As discussed in Chapter 9, on the institutional response of the CAS, the CAS did not, at the time of this meeting, believe it had information that children were currently at risk from Mr. Leduc.

Arrest of Jacques Leduc

Mr. Leduc was arrested on June 22, 1998, and charged with six counts in respect of allegations by C-16 and C-17. Unlike most of the Project Truth investigations, an arrest was made before a Crown brief was prepared and submitted to the Crown Attorney for an opinion. The police were concerned, correctly in my view, about the possibility that Mr. Leduc would hire a youth to do work for him over the summer. Detective Inspector Smith discussed the issue with Crown Attorney Robert Pelletier. Detective Inspector Smith also spoke with Bishop Eugène LaRocque prior to Mr. Leduc's arrest. According to Detective Inspector Hall, Detective Inspector Smith did this because Mr. Leduc was still working as a lawyer for the Diocese on some matters.

On June 22, 1998, Detective Sergeant Hall swore the information against Mr. Leduc, called him, and asked him to come to the police station. The arrangements for Mr. Leduc's arrest were Detective Sergeant Hall's idea, and he explained that this is typically how an arrest of this nature would be carried out: "You try to be as least intrusive as necessary. We weren't going to go and put the handcuffs on and make a public display in front of his employees. I mean, you know, you've got to be considerate." While Mr. Leduc was being arrested at the station, Detective Inspector Smith attended his residence and spoke to his wife. He did this because of suicide concerns, because another suspect, Richard Hickerson, had just committed suicide a few days before. Detective Inspector Smith knew that Mr. Leduc's wife was on sick leave and his understanding was that she was fragile.

Mr. Leduc was released on bail subject to a condition that he was not to be alone with any males under the age of eighteen. He was also not to communicate with the alleged victims and their families, or with C-23 and his family.

As described above, the investigation continued after Mr. Leduc's arrest. An additional six charges were laid against Mr. Leduc on July 17, 1998, and he was charged with four counts relating to allegations by C-22 on March 11, 1999.

Crown Attorney Shelley Hallett was assigned to prosecute the case in July 1998.

First Trial of Jacques Leduc and Stay of Proceedings

The trial of Mr. Leduc began on January 15, 2001. The trial is examined in detail in Chapter 11. This section will look at the participation of the OPP officers in the trial and their perspective on the events that unfolded. Detective Constables Dupuis and Seguin assisted Crown Hallett at the trial.

C-16's Mother Testifies About Contact With Constable Perry Dunlop; Detective Constable Joe Dupuis' Notes Were Not Disclosed

C-16's mother was called as a witness by the Crown. On February 7, 2001, in answer to questions put to her during cross-examination, she disclosed that she had two prior contacts with Constable Perry Dunlop. It was later determined that these conversations occurred on May 8 and June 15, 1998. She testified that Detective Constable Dupuis was aware of the second incident because he was at her home when Constable Dunlop called her. This testimony was significant because until this point, there had been no indication that Constable Dunlop had spoken to any witnesses connected with the Leduc prosecution.

Detective Constable Dupuis was in the courtroom, and when he heard this testimony, he remembered that he might have written something in his notebook about the call to C-16's house. He checked the Crown brief, but was unable to find a reference to it there. He contacted Detective Inspector Hall and asked him to check the statements for references to the call between Constable Dunlop and C-16's mother. When Detective Inspector Hall received this call from Detective Constable Dupuis, he remembered that Detective Inspector Smith had brought up Constable Dunlop's contact with C-16's mother during a meeting with Constable Dunlop on July 23, 1998.

Detective Inspector Hall did not know at the time whether Detective Constable Dupuis had notes of the incident and asked him to check his notebook. Detective Constable Dupuis, not knowing the date of the contact, looked through his notebook several times before he found the entry, several days later, on February 12, 2001. The entry was dated June 15, 1998, and it was five lines long:

1054 Picked up Project Guardian tape from the [C-16s]
 [C-16's mother] stated that she had received a call from
 Perry Dunlop wanting to know how the investigation
 was proceeding.

This note had not been disclosed to the Crown prior to the trial and, as a result, was not disclosed to Mr. Leduc's defence lawyers. At the hearings, Detective Constable Dupuis testified that he would have given this entry to the Crown but

simply missed it when he was preparing his will-state for the Crown brief. Detective Inspector Hall explained that when the officers prepare will-states for a Crown brief, they use a computer-generated sheet that lists all the relevant witness statements. As a result, it would have been “quite easy” for Detective Constable Dupuis to overlook the entry in his notes, because he did not attend C-16’s residence on June 15 to take a statement or gather evidence, and therefore there was no computer record of the note. Detective Inspector Hall explained that Detective Constable Dupuis would have to have had a conscious recollection of the incident or of making the note when preparing his will-state.

I accept that the failure of Detective Constable Dupuis to include his June 15 note in the material he provided to the Crown was inadvertent.

Further, both Detective Sergeant Hall and Detective Inspector Smith were aware of the contact between C-16’s mother and Constable Dunlop. Neither of them made a reference to this contact in their notes when they learned of it, nor did they note it when they discussed the incident with Constable Dunlop on July 23, 1998.

As I mentioned in the section “Interactions Between Project Truth and Constable Perry Dunlop,” Detective Inspector Smith and Detective Sergeant Hall were aware that Constable Dunlop was contacting a number of witnesses in the Project Truth cases. They should have been noting these contacts as they became aware of them, and they should have had a means of tracking Constable Dunlop’s exposure to their cases.

Documentation of the Contact Between Constable Perry Dunlop and C-16’s Mother

In fact, a number of documents in Project Truth’s possession mention the contacts between C-16’s mother and Constable Dunlop. As set out above, Detective Constable Dupuis had a note of the June 15, 1998 incident. The two conversations with C-16’s mother were also mentioned in notes disclosed by Constable Dunlop to Project Truth on March 14, 2000. Finally, in a will-state given to Project Truth in April 2000, Constable Dunlop made two references to his contacts with C-16’s mother. He refers to the May 8, 1998, conversation and to the July 23, 1998, meeting where Detective Inspector Smith, Detective Sergeant Hall, and Inspector Trew discussed his contacts with C-16’s mother. None of these had been disclosed to the defence prior to C-16’s mother’s testimony.

Detective Inspector Pat Hall Brings Documents to Courthouse

Around 2:00 p.m. on February 7, Detective Inspector Hall came to the courthouse and met with Detective Constables Dupuis and Seguin and Crowns Shelley Hallett and Christine Tier. He brought with him photocopies of the relevant

portions of Constable Dunlop's will-state and notes, as well as a copy of his own notes of the July 23, 1998, meeting with Constable Dunlop.

These were provided to Crown Tier for disclosure purposes. At this point, Detective Inspector Hall did not have Detective Constable Dupuis' note of the June 15 contact, because Detective Constable Dupuis was not able to locate it until February 12, while working on disclosure requests from defence counsel.

Police and Crowns Meet With Defence Counsel

Shortly after the meeting between the officers and the Crowns, Detective Inspector Hall, Detective Constables Seguin and Dupuis, Ms Hallett, and Ms Tier met with Mr. Leduc's defence lawyers, Steven Skurka and Philip Campbell. The defence counsel were given the material Detective Inspector Hall had brought with him to court. The officers felt that defence counsel were very critical of the police for not having disclosed this material earlier. Detective Inspector Hall, in particular, recalls defence counsel being very aggressive and accusatory. According to Detective Inspector Hall, defence counsel pointed out that as experienced police officers, they should have disclosed the Dunlop material as required by *Stinchcombe*, a Supreme Court of Canada case on disclosure obligations. Detective Inspector Hall said, "Mr. Skurka was very explicit about that and ... I got a dressing-down for not doing it."

Detective Constable Seguin and Detective Inspector Hall both testified that while defence counsel was questioning the police about not having disclosed this material, Ms Hallett said that she did not know anything about it before. Ms Hallett said something to the effect of, "This is news to me." Detective Inspector Hall interpreted this comment to mean that she did not have any knowledge about C-16's mother's contact with Constable Dunlop. He testified that he had difficulty understanding this comment, because he believed that Ms Hallett had gone through Constable Dunlop's will-state after Project Truth received it in April 2000, so he "couldn't see how she didn't know about that."

Detective Inspector Hall said that he did not tell defence counsel that Ms Hallett had been provided with the Dunlop material in April 2000 because he was not in court that morning and was unsure of what had been said. He also did not want to embarrass Ms Hallett in front of the defence lawyers. The officers left the meeting with the impression that defence counsel believed the police had not disclosed the Dunlop material to the Crown.

As will be discussed in Chapter 11, Ms Hallett acknowledged saying something like, "This is news to me," but testified that she was referring to the meeting between Detective Inspector Smith, Detective Sergeant Hall, and Constable Dunlop that took place on July 23, 1998, and not to the existence of the Dunlop material.

Police and Crowns Meet After Meeting With Defence Counsel

After the meeting with defence counsel, the officers and the Crowns had a discussion. Detective Inspector Hall told Ms Hallett that she did in fact have the Dunlop material in her possession, to which Ms Hallett said something to the effect of, “Yeah, yeah, yeah, I know.” Detective Inspector Hall interpreted this as an acknowledgment that what she had said earlier, in front of defence counsel, was inaccurate. According to Detective Inspector Hall and Detective Constable Seguin, Detective Inspector Hall also told her that he could have raised that issue in front of the defence but chose to wait until they left. Ms Hallett, on the other hand, testified that Detective Inspector Hall never said anything about not wanting to embarrass her in front of defence counsel.

Detective Inspector Hall took the position when testifying at this Inquiry that Ms Hallett lied during the meeting with defence counsel on February 7, 2001. He acknowledged, however, that his notes of the meeting do not reflect that belief and that he did not confront Ms Hallett about this perceived lie.

Detective Inspector Hall was understandably upset by defence counsel’s accusation of wilful non-disclosure. It is clear to me that he felt Ms Hallett was attempting to deflect blame for the failure to disclose onto the OPP officers. In my view, however, Detective Inspector Hall’s belief was the result of a misunderstanding during the meeting with defence counsel as to what Ms Hallett was referring to when she said, “This is news to me.”

Detective Inspector Pat Hall Sends Copy of July 4, 2000, Letter to Shelley Hallett

Following this discussion, Detective Inspector Hall returned to the Long Sault Detachment and obtained a copy of a letter from Ms Hallett to Detective Constable Dupuis, dated July 4, 2000. The letter, among other things, explained that she would review the Dunlop materials in order to determine what needed to be disclosed in the Father Charles MacDonald case.

Detective Inspector Hall wrote on the letter, “Shelley, For your information,” and signed his name. He instructed Detective Constable Seguin to deliver the letter to Ms Hallett the next morning. In a will-state later provided to the York Regional Police on this matter, Detective Inspector Hall said that the purpose of delivering the letter to Ms Hallett was to remind her of its existence, as her files were probably in Toronto, and so she would be in possession of it, if required, for disclosure. Detective Inspector Hall said he also wanted to remind her of their previous conversation about the Dunlop material. Detective Inspector Hall testified that he picked that particular letter because it stated that Constable Dunlop had personally attended Ms Hallett’s office in Toronto and given her a copy of his will-state. According to the letter, Ms Hallett was reviewing the material for the

Father MacDonald prosecution, not the Leduc matter. When questioned about this, Detective Inspector Hall replied, “if you see a name, you see a name,” meaning that he did not think that she would overlook the portions of the material that did not relate to the Father MacDonald case.

Detective Inspector Hall was of the opinion that this memo could be required for disclosure, although he never suggested this to Ms Hallett and he acknowledged that it would be her decision to disclose it. Detective Inspector Hall never explained to Crown Hallett why he sent her the letter.

On the morning of February 8, 2001, as per Detective Inspector Hall’s instructions, Detective Constable Seguin gave the copy of the July 4, 2000, letter to Ms Hallett. She attended the Project Truth office in the days following the delivery of this letter. She never asked Detective Inspector Hall why he sent it to her, and he did not ask her what she did with it. The letter was never discussed between them.

As will be discussed in Chapter 11, Ms Hallett did not know why the letter was sent to her but thought Detective Inspector Hall was trying to remind her that she was in possession of the Dunlop materials. In any event, Ms Hallett was of the view that as an internal communication between a Crown and a police officer, this was not the type of document that she would normally disclose.

As will be described below, the letter was not included in the disclosure package subsequently prepared by the Crown and the OPP. Detective Inspector Hall, however, provided a copy directly to defence counsel without informing Crown Hallett.

Defence Makes Several Disclosure Requests

Over the course of the next week, defence counsel made a number of disclosure requests of the Crown. The Project Truth officers assisted the Crown in fulfilling these requests. In a letter to Crown Hallett dated February 12, 2001, defence counsel requested two categories of disclosure. First, they asked for a detailed account from any officer with knowledge about Constable Dunlop’s contact with C-16’s mother. In this regard, they wrote:

It is clear to us that non-disclosure on this issue was willful rather than unwitting: Mr. Dunlop’s telephone call to [C-16’s mother] was of sufficient seriousness that Detective Dupuis raised the matter with his colleagues and superiors; reference to it was, however, omitted from his notes and willsay statements. The fact that OPP inspectors convened a meeting with Mr. Dunlop to broach the issue illustrates its importance to the investigators. We will require full disclosure from Inspector Smith

and Inspector Hall. We would welcome clarification as to whether Detective Dupuis determined on his own initiative to omit reference to the matter from his notes and statements or whether he received directions from his superiors in that regard.

The second category of requested disclosure related to “information available to the police and Crown about the general investigative activities of Constable Perry Dunlop.” Detective Inspector Hall testified he interpreted this letter to mean that it required the disclosure of internal correspondence such as the July 4, 2000, letter from Ms Hallett to Detective Constable Dupuis. Yet at no time did Detective Inspector Hall discuss with Ms Hallett whether she should disclose the letter.

Detective Inspector Hall wrote a lengthy letter to Ms Hallett on February 15, 2001, in response to the February 12 letter from defence counsel. He stated:

I did not at any time willfully fail to make disclosure in this case. As you are aware, my position has always been that the Crown Attorney make disclosure, and the police provide the material for disclosure.

I did not at any time give any instructions to Detective Constable DUPUIS to withhold disclosure in relation to the [C-16's mother] conversation about her contact with Perry DUNLOP. In fact, in our meeting with defence counsel on 07 February 01, at the court house, I did not know at that time that Detective Constable DUPUIS had any notes of the conversation of 15 June 98.

Detective Inspector Hall also discussed the purpose of the July 23, 1998, meeting with Constable Dunlop and provided a detailed list of his contacts with Constable Dunlop.

The defence made further disclosure requests on February 14 and 15, 2001. One of the items requested in the February 15 letter from defence counsel was “[a]ny correspondence, notes, memos, letters or other records reporting to the *Crown* about issues related to Perry Dunlop, whether generally or before and after July 23, 1998” (emphasis in original).

Ms Hallett forwarded the February 15 letter from defence counsel to Detective Inspector Hall with a handwritten note requesting that “further efforts be made to follow through on items still outstanding.” In a memo she sent to a number of senior Crowns in March 2001, Ms Hallett wrote that she felt this would have been an additional opportunity for Detective Inspector Hall to include anything he wanted her to disclose, including her letter of July 4, 2000.

When asked why he did not raise the letter with Ms Hallett if he thought it should be disclosed, Detective Inspector Hall first replied, “I could have raised it with her, but ... based on the information I had from my supervisor, she was having some emotional problems and I wasn’t going to breach [sic] that with her.” In response to a suggestion that this was irrelevant and further questioning on the issue, he testified, “I didn’t think at that time it needed to be disclosed.” He explained that it was up to Crown Hallett to determine what to disclose. When pressed further, Detective Inspector Hall stated it was not apparent to him that the July 4, 2000, letter was not in the disclosure package. With respect to this last explanation, Detective Inspector Hall said he had delegated to his officers the responsibility to collect the outstanding items for disclosure.

Ms Hallett responded to defence counsel on February 16, 2001, and enclosed a number of materials. She copied Detective Inspector Hall so he was aware of what she was disclosing.

None of Detective Inspector Hall’s excuses strike me as particularly convincing. If he felt that the letter was relevant for disclosure, he had ample opportunity to share this opinion with Ms Hallett. It is clear he chose not to. In my view, he provided her with the July 4, 2000, letter as a means of reiterating the fact that she had the Dunlop materials and that, accordingly, the blame for non-disclosure should rest with the Crown, not the police. If Detective Inspector Hall felt this needed to be explained to defence counsel through disclosure of the letter, he should have made Ms Hallett aware of his views. If he felt that Crown Hallett was not sufficiently addressing his concerns, he should have raised the matter with his superiors, so that they could discuss the issue with Crown Hallett’s superiors, who could then direct her to take action.

At this time, the police were, understandably, distressed by the accusation of wilful non-disclosure levelled at them by defence counsel both in the meeting of February 7 and the letter of February 12. In the meetings between OPP and the Crown about disclosure, Detective Inspector Hall said there was no indication from Crown Hallett that she was intending to clear up these accusations against the police. Detective Constable Dupuis testified that he did not recall anyone explaining to him between February 7, 2001, and the stay of proceedings on March 1, 2001, the difference between inadvertent non-disclosure and deliberate non-disclosure or how the courts treat those concepts differently. As discussed in Chapter 11, Shelley Hallett testified that she did explain to the officers her strategy of arguing inadvertent disclosure. The perceptions of the parties obviously vary on this point.

What is clear is that the Crown and the OPP were not functioning as a team to address the defence’s accusation of wilful non-disclosure. They failed to develop a coordinated strategy to deal with this issue. Instead of openly and

co-operatively dealing with a difficult situation, they let the lines of communication break down, which compounded any misunderstanding that initially existed.

Defence Brings Stay Application; Shelley Hallett Admits in Court to Having Dunlop Material

On February 14, 2001, defence counsel for Mr. Leduc declared their intention to bring a motion for a stay of proceedings on the basis of deliberate non-disclosure by the police:

The basis of our motion will be in brief, deliberate non-disclosure by one of the officers in charge of this case, Detective Constable Dupuis and several senior ranking police officers in the Project Truth investigation. It will be in the position of the defence on the motion, that these officers colluded and conspired to suppress all information in their possession relating to Perry Dunlop's participation in this case.

Ms Hallett made submissions to the Court in order to "contextualize" the application framed by defence counsel. She indicated that she too was surprised by the evidence of C-16's mother about her contact with Constable Dunlop. With respect to the entry in Detective Constable Dupuis' notebook that was not disclosed, she made these comments:

I would say, thousands of pages of both notebook entries and statements and the results of the investigation have been disclosed to the defence. However, one page of five lines with respect to this June 15th contact between [C-16's mother] and Constable Dunlop was not identified as something that should be handed over and I must say that, and there will be evidence I'm sure called on this next week obviously, that I have every confidence that, that omission was as a result of inadvertence by the investigation officer, Detective Dupuis and that there is no sinister or ulterior motive for not including that in all of the disclosure that has been provided in this case.

In these submissions, Crown Hallett is clearly defending the police, arguing that the non-disclosure was inadvertent. Ms Hallett also made submissions to the Court about the fact that she had received and reviewed the Dunlop material:

As I say, I perused these documents in a cursory way to satisfy myself, essentially, that they should be disclosed to defence counsel for Father MacDonald. However, because of my unawareness of any connection

[between] Constable Dunlop and the witnesses for the Leduc matter, I did not pour [sic] over each document to see whether there was anything that would be relevant to Mr. Leduc's defence. And I take responsibility for that, however, as I say, by that point in time we had had the preliminary inquiry. There had been two judicial pre-trial conferences, there had been no suggestion to me as to what the defence was going to be. I had frankly anticipated a defence completely different than the one that I now have become aware, is being raised—a defence that was certainly something that I thought might be raised in this case and I obviously was wrong.

In these submissions, Ms Hallett took responsibility for the fact that she had reviewed the Dunlop materials and that she had not determined them to be relevant to the defence in the Leduc matter. If the Project Truth officers were not initially advised of the Crown strategy, it should have become evident to them at this point. Detective Constables Dupuis and Seguin were both in court on this day and would have heard Crown Hallett's submissions. Detective Inspector Hall was not in court, and he does not recall speaking with Detective Constable Dupuis about what transpired.

According to Detective Inspector Hall, he first became aware of Crown Hallett's submissions to the Court that Detective Constable Dupuis' non-disclosure was inadvertent rather than wilful when he was cross-examined by Crown Hallett during the application for stay of proceedings on February 22, 2001. During her cross-examination, she outlined to the Court some of her submissions of February 14.

Stay Application Begins; OPP Officers Meet With Defence Counsel

The stay application began on February 19, 2001. As will be discussed in Chapter 11, because of the testimony of Richard Nadeau, Justice Colin McKinnon recused himself and Justice James Chadwick heard the stay application.

Retired Detective Inspector Smith was told by Detective Inspector Hall that he had to come to Cornwall on the Leduc matter and that he would be subpoenaed. Detective Inspector Smith arrived in Cornwall on February 19 and had dinner with Detective Inspector Hall and Ms Hallett. Detective Inspector Smith had never met her before, and they discussed the investigation and where the case was going. Detective Inspector Smith was not yet a witness on the stay application, but he had prepared a statement about his contacts with Constable Dunlop to be disclosed to the defence.

The next morning in court, Crown Hallett handed Detective Inspector Smith a subpoena to testify for the defence on the stay application. Ms Hallett did not

know what the defence sought to ask him, and so Detective Inspector Smith, who knew defence counsel Steven Skurka from a previous trial, told Ms Hallett he was going to see Mr. Skurka to ask him what he wanted. Detective Inspector Smith testified that Ms Hallett responded, “well okay,” and he went to speak to defence counsel. There is a difference of opinion as to how the other officers came to accompany Detective Inspector Smith. What is clear is that Ms Hallett was aware that Detective Inspectors Smith and Hall and Detective Constable Dupuis went to speak with defence counsel. Although she thought this unusual, she did not object. Her recollection of what transpired will be discussed in Chapter 11.

Detective Inspector Smith testified that he went into a small office outside the hall and spoke to Mr. Skurka, who asked him if he had any notes pertaining to the discussion he had with Detective Constable Dupuis about the contact between Constable Dunlop and C-16’s mother. Detective Inspector Smith replied that he did not, but that he recalled vividly what had taken place. Mr. Skurka then gave Detective Inspector Smith his card, told him to send his expenses and told him that he might not be called as a witness. Detective Inspector Smith said this conversation took less than one minute. According to Detective Inspector Smith’s recollection, Detective Inspector Hall then came in, and a number of officers were speaking with defence counsel Phillip Campbell when Detective Inspector Smith left. Detective Inspector Smith said he did not know why Detective Inspector Hall and Detective Constable Dupuis came to meet with the defence, or what transpired between them after he left.

According to Detective Inspector Hall, the three officers attended the meeting with defence counsel at the same time, although he does recall that Detective Inspector Smith left before he and Detective Constable Dupuis did. Although Detective Inspector Hall did not make contemporaneous notes of this meeting, an issue that will be discussed in further detail below, he set out his recollection of the meeting in a will-state he prepared several months later for the York Regional Police investigation into allegations that the Crown wilfully withheld disclosure in the Leduc matter:

The meeting lasted approximately 10 minutes. CAMPBELL, who it appeared would be directing questions to the writer the following morning asked specifically about the DUNLOP material in relation to his Will State and notes. He wanted to know when it was received and by whom, and when was Ms. HALLETT provided with the disclosure. He wanted to know if there was any correspondence in relation to the DUNLOP Will State and notes. The writer was aware from disclosure requested in the past weeks that correspondence relating

to disclosure was requested from Defence Counsel. The writer indicated to CAMPBELL and SKURKA that there was correspondence on file at our office from Ms. HALLETT in that regard and was surprised that they did not have it. They requested to have a copy that day before court. The correspondence that the writer was referring to was a memorandum directed to D/Constable DUPUIS with a c.c. to the writer dated 04 JUL 00. The same memorandum that was provided to Ms. HALLETT on 08 FEB 00 [sic], with the writer's note written on it. Defence Counsel were staying at NAVCAN and provided telephone and fax number.

Detective Inspector Hall does not believe Detective Inspector Smith was present when they were discussing the July 4, 2000, letter.

Detective Constable Dupuis, at Detective Inspector Hall's request, provided defence counsel with a copy of the July 4, 2000, letter later that day, February 20. Detective Inspector Hall testified that he did not know he was going to give the letter to defence counsel until they asked him that day whether there was any correspondence relating to the Dunlop materials. Detective Inspector Hall never advised Ms Hallett that he was going to provide a copy of that letter to the defence.

Detective Constable Dupuis had never been in a meeting with defence counsel without a Crown attorney present. Although Detective Inspector Hall had met with defence lawyers without a Crown attorney present, he acknowledged that following such meetings he would inform the Crown about what was discussed. He agreed that it is important to fully brief the Crown about these discussions.

Although it may be unusual, there is nothing wrong with police officers meeting with defence counsel without a Crown attorney present in a situation, such as this, where the officers are to be called as witnesses for the defence. There is no property in witnesses. However, if matters such as disclosure are discussed, it is imperative that the Crown be informed.

Accordingly, I find that Detective Inspector Hall failed in his professional duties by providing documentation directly to defence counsel without consulting the Crown attorney and by failing to advise the Crown that such disclosure had been made. As I have said before in this Report, disclosure is solely within the purview of the Crown. If Detective Inspector Hall felt that the letter should be disclosed in light of what he would be asked on the stand the next day, he should have brought this to Ms Hallett's attention. Had he done so, he likely would have learned that Ms Hallett had acknowledged in court on February 14 that she had reviewed the Dunlop materials and accepted responsibility for the shortcomings in disclosure.

I reiterate the point that if Detective Inspector Hall had a concern with Crown Hallett's approach after raising the matter with her, or if he felt that he could not have raised the matter with her, he should have brought the issue to the attention of his superiors so that they could discuss it with her superiors.

Discussions With Shelley Hallett After the Meeting

According to Detective Inspector Hall, following the meeting with defence counsel, the officers returned to where Ms Hallett was gathering up her material, and he advised her that the defence was inquiring about the Dunlop disclosure and was going to direct questions specifically about when it was received, when it was disclosed, and any correspondence relating to it. Detective Inspector Hall testified that he also told her that Mr. Skurka had said they might not need to call Detective Inspector Smith as a witness. Detective Inspector Hall did not tell Ms Hallett about the intention to give the July 4, 2000, letter to the defence.

Detective Inspectors Smith and Hall were scheduled to meet with Ms Hallett after lunch. According to Detective Inspector Hall, Ms Hallett was late arriving for the meeting and when she did arrive, Detective Inspector Hall did not stay. Rather, he told her that he was going home to take his wife out to dinner for their anniversary and would see her in court the next morning. Detective Inspector Hall then went to the Long Sault Detachment to obtain a copy of the letter he says was requested by defence counsel. Detective Inspector Hall did not tell Ms Hallett he was going to retrieve this correspondence to give it to defence counsel. Detective Inspector Hall explained that he did not want to "push any buttons" or get in a verbal altercation with Ms Hallett: "So I was just going to do what I was going to do"—that is, give disclosure directly to the defence without telling the Crown.

Detective Inspector Smith met with Ms Hallett for approximately two hours, during which time they went through his notes. He left around 4:00 p.m. and returned home. At the time, Detective Inspector Smith lived just over 200 kilometres from Cornwall. He did not stay because he did not think he was needed at the stay application given what Mr. Skurka had said to him.

July 4, 2000, Letter Is Disclosed to the Defence Without Crown's Knowledge

Detective Inspector Hall could not find a copy of the July 4, 2000, letter at the Long Sault Detachment, so he called Detective Constable Dupuis, who also could not find the letter. Detective Inspector Hall instructed him to obtain a copy from Ms Hallett and take it to defence counsel. He did not instruct Detective Constable Dupuis to advise Crown Hallett why he needed the letter.

Detective Constable Dupuis, accompanied by Detective Constable Seguin, went to Ms Hallett's hotel room and asked her for a copy of the letter, explaining that they could not find their copy. Detective Inspector Smith was meeting with Ms Hallett at the time. Ms Hallett gave the letter to Detective Constables Dupuis and Seguin and they left. They did not advise Crown Hallett that they intended to provide this document to defence counsel. Detective Constable Dupuis thought she knew this was the intention, as he assumed Detective Inspector Hall had discussed it with her. The officers made a copy of the document and returned Ms Hallett's copy to her. They then turned over the letter to defence counsel.

Detective Constable Dupuis acknowledged that the direct delivery of a document by a police officer to defence counsel was a highly unusual occurrence unless it is done pursuant to Crown instruction. Detective Constable Dupuis also thought it was unusual because of the sense of urgency involved: "It was, 'Hurry up and get it to Mr. Campbell.'"

Detective Inspector Hall acknowledged that it was entirely his decision to disclose the document to defence counsel and said that it was unfortunate that his officers had to get involved. He did not seek any advice from his superiors or colleagues about whether to disclose the letter to the defence.

Detective Inspector Hall agreed that it is not the role of police officers to provide disclosure but rather the role of the Crown, and that he has never in his vast experience as a police officer made disclosure as he did in this case. He explained, however, that he felt this was an "unusual situation" because "in my entire career I never had a Crown attorney lie to me in front of defence counsel." According to Detective Inspector Hall, the primary reason he turned the document over to defence counsel was because he was going to be questioned under oath the next morning. He thought giving the document directly to the defence without going through the Crown was the appropriate thing to do because he believed Crown Hallett had lied to defence counsel on February 7, 2001.

During his testimony, Detective Inspector Hall frequently said that he felt Ms Hallett should have said to defence counsel on February 7 what she did to the Court on February 14—that is, she should have admitted that she had received the Dunlop material. Detective Inspector Hall acknowledged that in hindsight he could have advised Ms Hallett that he was giving the letter to the defence. When pressed as to why he did what he did, Detective Inspector Hall responded: "I wasn't worried about the OPP; I was worried about me ... I wanted to make it clear to the defence that the police didn't fail to disclose."

It is clear to me that Detective Inspector Hall was so focused on the accusations made against him, he lost sight of his professional duties and the ultimate goal of successfully bringing the matter to a trial on the merits. Even years later,

in his evidence at this Inquiry, Detective Inspector Hall did not admit that he had done anything wrong, nor did he acknowledge the consequences of his actions.

The fact is, the Project Truth investigators did inadvertently fail to disclose their knowledge of contacts between Constable Dunlop and C-16's mother, and the Crown inadvertently failed to disclose the relevant notes and will-state from Constable Dunlop to Mr. Leduc's defence counsel. Although it could have prevented a misunderstanding with Detective Inspector Hall, an acknowledgment by Ms Hallett in the February 7 meeting that she had reviewed the Dunlop materials would not have changed the fact that the materials had not been disclosed.

Moreover, Detective Inspector Hall decided to disclose the letter directly to the defence, *after* Ms Hallett had admitted in open court that she had reviewed the Dunlop material. Ms Hallett's "lie" was the key motivation for Detective Inspector Hall's actions, yet he did not bother to check whether his concern had been corrected before making his own disclosure decisions.

Detective Inspector Pat Hall's Notes

Before turning to what transpired after the disclosure of the letter, I want to comment on the fact that Detective Inspector Hall did not take any contemporaneous notes of the meeting with defence counsel in the courthouse on February 20. Detective Inspector Hall took meticulous and detailed notes over the entire course of Project Truth. In fact, twenty-one of his notebooks spanning a seven-year period were entered in evidence at this Inquiry. Detective Inspector Hall testified that his normal practice was to write notes of anything of significance before going off duty. On February 20, however, Detective Inspector Hall made no notes of his meeting with defence counsel, although he made notes of other events that day. He did write extensive notes about the meeting one week later, on February 27, 2001.

Detective Inspector Hall's explanation for this anomaly was that "it was an unusual day." When asked why he wrote the notes later, Detective Inspector Hall explained that there was some information he did not have until February 27, such as what transpired during the meeting between Ms Hallett and Detective Inspector Smith in the afternoon on February 20.

I am puzzled by this response, as the purpose of writing notes each day is to record anything of significance observed on that day. It appears to me that by February 27, Detective Inspector Hall had become aware of the ramifications of the meeting and, accordingly, wished to record his version of events.

Stay Application Proceeds Before Justice James Chadwick

On February 21, 2001, the stay application proceeded before Justice Chadwick. Detective Inspector Hall commenced his testimony that day. That evening James Stewart, the Director of Crown Operations, Eastern Region, came to Cornwall to have dinner with Crowns Hallett and Tier. This is discussed in further detail in Chapter 11. I note here that Detective Inspector Hall was present at the restaurant, stopped by their table, and engaged in conversation. If Detective Inspector Hall had any concerns about the July 4, 2000, letter and whether it should be disclosed, he had an opportunity at this time to speak with Mr. Stewart.

Detective Inspector Hall continued his testimony on February 22, 2001. As I discuss in Chapter 11, during Ms Hallett's cross-examination of the officers, she attempted to show the Court that Detective Constable Dupuis' failure to disclose his notes of the June 15, 1998, incident was inadvertent.

Detective Inspector Pat Hall Meets With Defence Counsel Again

Detective Inspector Hall's testimony finished the morning of February 22, 2001, and was followed by Detective Constable Dupuis. After the lunch recess, Detective Inspector Hall was recalled to the witness stand by defence counsel. At the outset of this "second round" of testimony, Detective Inspector Hall was asked to confirm that he and Detective Constable Seguin met with defence counsel over that lunch break, during which the lawyers asked him questions about the July 4, 2000, letter. This lunch meeting had taken place without the knowledge of the Crown. Detective Inspector Hall explained at this Inquiry that he had no difficulty meeting with defence counsel because they were just asking him for more information about the July 4, 2000, letter. As described in Chapter 11, during this second round of testimony Detective Inspector Hall was then asked about providing a copy of the letter to Ms Hallett on February 8, 2001, and whether the purpose of doing so was so that she could disclose it.

Ms Hallett again cross-examined Detective Inspector Hall. She asked him if he had been present in court on February 14, 2001, and she reiterated much of what she had said to the Court on that day about having received and reviewed the Dunlop materials. Detective Inspector Hall said he was not aware of what Ms Hallett told the Court on February 14 until this cross-examination.

Final Submissions on the Stay Application; Shelley Hallett Is Upset With Detective Inspector Pat Hall

Following the completion of the stay application on February 26, 2001, Detective Constables Dupuis and Seguin met with Crowns Hallett and Tier. Both Detective Constables Dupuis and Seguin's notes indicate that Ms Hallett was upset with

Detective Inspector Hall for having gone “behind her back” to give the July 4, 2000, letter to the defence. It appeared to the officers that she had not been aware that the letter had been given to the defence. Ms Hallett’s reaction is further described in Chapter 11.

Following this meeting, Detective Constable Dupuis contacted Detective Inspector Hall and advised him of some of the comments made by Ms Hallett, including the fact that she held Detective Inspector Hall responsible for giving the July 4 letter to the defence and that she believed he had done so because she was a woman. Despite this, Detective Inspector Hall testified that he did not feel that his relationship with Ms Hallett had broken down at this point.

Detective Inspector Pat Hall Speaks With James Stewart About Shelley Hallett

The next day, after hearing about Ms Hallett’s comments from his officers, Detective Inspector Hall contacted Mr. Stewart. He told Mr. Stewart that he did not think that Ms Hallett could handle the Father MacDonald case because she “didn’t have it to be a front line Crown” and suggested that Crown Robert Pelletier be assigned to the case. Detective Inspector Hall advised Mr. Stewart that Ms Hallett had previously indicated that she did not want to do the Father MacDonald case.

Stay Granted

On March 1, 2001, Justice Chadwick granted the stay of proceedings. Justice Chadwick found that the July 4, 2000, letter showed that the Crown had reviewed the Dunlop materials in more than just a cursory manner. He determined that the materials should have been disclosed and that the Crown’s failure to do so was wilful:

These materials should have been disclosed. I can only conclude that the holding back of the July 4th, 2000 letter and the Dunlop notes and will say statements, which had been reviewed in depth by the Crown, show that the Crown did not want the portal to open to make Dunlop’s evidence relevant to the Leduc case. I find the failure to disclose by the Crown was willful.

Detective Inspector Hall acknowledged that it appeared that the July 4, 2000, letter and the fact that it was disclosed by the police rather than the Crown were relevant to Justice Chadwick. In fact, in the Ontario Court of Appeal decision that overturned Justice Chadwick’s decision, the Court found that the July 4 letter, both its contents and the circumstances of its disclosure, were the “crucial

plank” on which Justice Chadwick’s findings rested. It is sufficient to note here that the Court of Appeal went on to find that “not only did Ms Hallett not suppress the letter, she had no reason to disclose it.” As to whether in hindsight Detective Inspector Hall should have advised Ms Hallett about what he intended to do with the July 4, 2000, letter, he said, “Well, I think, in hindsight, both her and I could have did things differently.” He agreed that one of the things he could have done differently was talk to Ms Hallett about what he was doing.

As I have mentioned above, Detective Inspector Hall’s belief that Ms Hallett lied to defence counsel was the result of a misunderstanding. However, even if Detective Inspector Hall was justified in his view that Ms Hallett was less than candid in the meeting, his response (in the form of disclosing the letter directly to defence counsel) was unnecessary and unprofessional. It was also irresponsible and, in my view, ultimately contributed to the stay of proceedings in this case. If Detective Inspector Hall was concerned that Ms Hallett had been dishonest with defence counsel, he should have confronted Ms Hallett directly or taken his concerns to a superior rather than take action which he should have known would jeopardize the case.

Crown Shelley Hallett No Longer Assigned to Project Truth Cases

On March 8, 2001, Detective Inspector Hall met with Mr. Stewart to discuss the Project Truth files that were assigned to Ms Hallett, as she would no longer be involved in Project Truth matters. According to Detective Inspector Hall, he tried to discuss the events that took place on February 7, 2001, with Mr. Stewart, but he “didn’t want to deal with it.” Detective Inspector Hall testified that he showed Mr. Stewart the February 12, 2001, letter from defence counsel in which they accused the police of failing to make disclosure. Detective Inspector Hall said that Mr. Stewart just looked at it and gave it back: “[H]e didn’t want to enter any discussions about it at all.”

Detective Inspector Pat Hall Writes E-mail to James Stewart

On April 3, 2001, Detective Inspector Hall sent an e-mail to Mr. Stewart. The e-mail was predominantly about the nine boxes of Dunlop materials and the issue of Constable Dunlop having a privacy interest in those materials. At the end of the e-mail, however, Detective Inspector Hall made the following comments:

What disturbs me most is Ms. HALLETT not being truthful with SKURKA & CAMPBELL on FEB 07, 01 when the [sic] first asked about the DUNLOP material in light of the fact that on JAN

[illegible] 01³⁵ I had a telephone conversation with Ms. HALLETT when she asked me about the DUNLOP involvement in the LEDUC matter and how the initial complaint came in. None of us knew about the 5 lines in DUPUIS note book at that time. SHE certainly knew DUNLOP made notes and his will say entry on the [C-16's mother] conversations.

When Detective Inspector Hall wrote this e-mail he was aware that Ms Hallett was no longer working on Project Truth cases. According to Detective Inspector Hall, he wrote the comment about Ms Hallett because he was still concerned about the issue. He said there were several media articles saying that the police stabbed the Crown attorney in the back. This e-mail, and particularly its allegation that Ms Hallett was aware of Constable Dunlop's involvement in the Jacques Leduc case in January 2001, is discussed in further detail in Chapter 11.

After receiving Detective Inspector Hall's e-mail, Mr. Stewart discussed the matter with other senior Ministry officials and on May 16, 2001, the Attorney General's Office forwarded the information to the York Regional Police. As a result, the York Regional Police initiated an investigation "to determine if Crown Attorney Hallett willfully failed to disclose relevant materials provided by Constable Perry Dunlop to Defence in relation to R vs. Leduc."

Project Truth Officers Interviewed by York Regional Police

Detective Constables Dupuis and Genier and retired Detective Inspector Smith all gave statements to the York Regional Police. Detective Inspector Hall and Detective Constable Seguin provided written will-states in lieu of an interview. According to Detective Inspector Hall, he did not refuse to be interviewed. When Inspector Denis Mulholland and Detective Sergeant Denise LaBarge of the York Regional Police came to his office on May 17, 2001, wanting to conduct an audiotaped interview, Detective Inspector Hall requested time to prepare a written statement given the complexity of the case.

In addition to outlining events in the Jacques Leduc case, Detective Inspector Hall's will-state raises a host of other issues, such as the delay in the legal opinions Crown Hallett was to provide in other Project Truth matters, difficulties he had in contacting her, and their differences of opinion regarding the arrest of another suspect and her transfer of the Dunlop boxes from the CPS to the OPP office. Detective Constable Seguin also included unrelated matters in his will-state. In particular, he noted her being late and her "over-interviewing" of witnesses.

35. Detective Inspector Hall's will-state to the York Regional Police states that the conversation occurred on January 9, 2001.

In my opinion, these matters were extraneous and irrelevant to the matter the York Regional Police was investigating, and there was no need for the officers to include them in their will-states. Nor was there any need for the York Regional Police to enquire into these matters.

Despite the concerns he outlined, Detective Constable Seguin testified that he thought Ms Hallett was an experienced and dedicated prosecutor who took the Jacques Leduc case seriously.

York Regional Police Conclude No Basis for Criminal Charges Against Shelley Hallett

The York Regional Police concluded that the e-mail sent by Detective Inspector Hall to Mr. Stewart was the result of frustration over several concerns and that nobody interviewed, including Detective Inspector Hall, believed Crown Hallett had intentionally withheld information from the defence. As a result, the investigative team concluded that there was no basis for criminal charges against Ms Hallett for the wilful non-disclosure of material to the defence in the Jacques Leduc matter.

Appeal of Stay of Proceedings

Justice Chadwick's decision to stay the proceedings in *R. v. Leduc* was appealed by the Crown in 2001 and overturned by the Court of Appeal in July 2003. The Supreme Court of Canada denied Mr. Leduc's request for leave to appeal in January 2004. The Court of Appeal's decision and the second trial of Mr. Leduc, which ended in a stay of proceedings, are discussed fully in Chapter 11. Two incidents occurred during this time that involved the OPP.

Jacques Leduc's Wife Contacts C-22

While Justice Chadwick's decision was pending appeal, Jacques Leduc's wife contacted C-22 and asked him to meet her at noon on August 9, 2001, at a particular intersection. On August 8, 2001, Detective Constable Dupuis received a call from a friend of C-22 who advised him of this fact. She had concerns about the meeting and had requested that C-22 not attend. Detective Constable Dupuis called Detective Inspector Hall and they discussed the implications of Mr. Leduc's wife meeting with C-22 to talk about his allegations. Detective Constable Dupuis then spoke with C-22, who expressed concerns for his safety and said there was no reason provided for the meeting. Detective Constable Dupuis told C-22 he could not stop him from going to the meeting, but asked C-22 not to attend. Detective Constable Dupuis told C-22 that meeting with Mr. Leduc's wife could cause issues at a new trial if the appeal was successful.

The next day, Detective Constables Dupuis, Genier, and Seguin set up surveillance at the specified corner to see if the meeting would take place. Ms Leduc arrived, but C-22 did not. The officers followed her back to her residence but did not speak to her. Later that day, Detective Constable Dupuis contacted C-22, who said that he did not show up for the meeting and had not received any other calls from Ms Leduc.

Detective Constable Dupuis testified that the officers were “confused” as to why Ms Leduc wanted to meet with C-22. He does not recall advising a Crown attorney about this incident.

This was certainly questionable behaviour from the wife of a suspect, particularly in light of the fact that one of the conditions of Mr. Leduc’s release after his arrest was that he not communicate with the complainants. Ms Leduc’s contact with C-22 could be seen as a violation of the conditions of release if she was attempting to speak to C-22 on Mr. Leduc’s behalf. Her attempt to contact C-22 may also have been an attempt to obstruct justice, depending on what she planned to say to him. In my view, the OPP should have taken the opportunity to question Ms Leduc about her actions and her motives. The officers also should have informed the responsible Crown prosecutor of this incident in the event that it came up at a new trial.

Disclosure Motion in Second Trial of Jacques Leduc

Detective Constable Seguin was the officer assigned to the second trial of Mr. Leduc and assisted the Crown, Lidia Narozniak, in preparing for trial. Detective Constable Seguin was present during the defence motion for disclosure of all relevant notes and materials from Mr. Dunlop and Carson Chisholm, which was heard over several days in August 2004 and September 2004.

On September 13, 2004, Justice Plantana issued an order of production for Mr. Dunlop to produce all material in his possession or control relating to this matter.

Perry Dunlop Served With Production Order

On September 27, 2004, Detective Constables Seguin and Genier attended at Perry Dunlop’s home in British Columbia to serve the production order.

Detective Constable Seguin had been instructed by Detective Inspector Colleen McQuade to serve Mr. Dunlop with the production order personally. The officers arrived, in suit and tie, at the Dunlop home around 7:00 a.m. Detective Constable Seguin testified that they went early because he knew Perry Dunlop worked in construction, and so his workday could start very early. He wanted to get there before Mr. Dunlop left for the day. Detective Constable Seguin did not recall seeing any children. Detective Constable Seguin handed him

the document and explained what it was, and the officers left the Dunlops' property within ten minutes.

According to Detective Constable Seguin, Mr. Dunlop knew he was going to be served with the production order because Detective Constable Seguin had explained the document to him over the telephone twelve days earlier. This is confirmed by an entry in Detective Constable Seguin's notes on September 15, 2004:

1023 Contacted Perry Dunlop at [phone number]

Advised him of Production Order for any materials in his possession and /or control + that it would be served sometime next week. Call was a heads-up so that he had time to put it together. Also reminded him of info he said in Court that he'd look for it.

No fax avail for him.

Due 30th Sept.

At this Inquiry, Helen Dunlop testified that she was upset that the police officers came to their residence unannounced and felt they were there to "intimidate and harass" the Dunlop family. She thought they could have sent the production order by fax and that it was unnecessary for them to come in person. Following this visit by the OPP officers, the Dunlops' lawyer, Yvonne Pink, wrote a letter to Chief Superintendent Frank Ryder explaining how the Dunlops felt about the incident. The letter reads, in part:

The constables' untimely arrival at the Dunlop residence, before their children had left for school, was completely and utterly insensitive and unleashed a series of painful and frantic reactions from my clients' three young daughters. It is next to impossible to adequately express the flashbacks of fear and terror these children experienced on the morning of September 27th. The Dunlop family left Cornwall, Ontario more than four years ago to remove themselves from such harassment. They sought refuge on Vancouver Island to live a quiet family life and to begin healing the wounds caused by years of humiliation, harassment and threats as a result of these investigations.

...

What was the point of this unannounced visit? On whose authority did the constables travel to Vancouver Island? Neither constable offered up any such explanation on the morning of September 27th. Instead, my clients were left with an overwhelming sense that one or possibly two

things were going to happen on or about October 1, 2004: a search warrant would be executed at their home and/or Mr. Dunlop would be arrested. The constables indicated they would be in “town for a week.” Nothing was said by either of them to assure or dissuade my clients from either of these possible actions.

The response from Chief Superintendent Ryder, addressed to the Dunlops’ lawyer, was brief:

I am in receipt of your letter dated 25 October, 2004. Please be advised that in future you will be contacted if we require anything further with respect to your clients, Mr. Perry DUNLOP and Mrs. Helen DUNLOP.

Helen Dunlop testified that they did not receive answers to any of the questions they asked in their letter.

It is unfortunate that the Dunlop family was upset by the arrival of Detective Constables Seguin and Genier. I believe the officers could have lessened the family’s discomfort by pre-arranging a time to attend at the home. However, aside from not extending that courtesy, I do not believe Detective Constables Seguin and Genier did anything wrong. They provided Mr. Dunlop with advance notice that they would be serving him with the production order, explained what was required of him, and were at the Dunlop residence for only a short time.

As will be discussed in Chapter 11, the charges against Mr. Leduc were stayed in October 2004 on the basis of delay.

Investigations Relating to the Cornwall Classical College

For many years the Cornwall Classical College (Collège classique de Cornwall) was the subject of rumours regarding the sexual abuse of young people. The most sensational claim was that a pedophile ring operated out of Classical College. The alleged abusers were priests at the school as well as other individuals who had a close connection to these priests or to the College. Classical College shut down in the late 1960s and was purchased by St. Lawrence College.

Classical College was operated by Les Clercs de Saint-Viateur, a religious order based in Montreal. Given that Classical College has been closed for approximately forty years, and that Les Clercs de Saint-Viateur no longer operate in Ontario, the institutional response of the Classical College is not within my mandate. However, it does fall within my purview to analyze how public

institutions such as the Ontario Provincial Police (OPP) responded to allegations and rumours of abuse occurring at Classical College.

At the very outset of Project Truth a number of individuals reported allegations of abuse at Classical College.

C-102's Allegations

On July 28, 1997, Detective Constable Steve Seguin spoke to C-102, who reported that when he was five years old, he was sexually abused at the Classical College by a man who he believed was a science teacher from the school. One of the officers noted in the Case Manager Assignment Register that because the suspect was middle-aged at the time of the abuse, he was possibly deceased. Detective Constable Seguin took a statement from C-102 on November 4, 1997. I have seen no evidence to indicate whether this suspect was eventually identified.

C-103's Allegations

Detective Constable Seguin received another complaint about Classical College on August 6, 1997. C-103 alleged that he had been sexually and physically assaulted by a brother or priest at the school. C-103 was not interviewed until November 2, 1998. Detective Constable Seguin attributed this delay to the fact that C-103 did not have a phone and so the officers had to leave messages for him with his mother, who lived half an hour away. At the time of his interview, C-103 was unable to name the person who allegedly abused him, but gave the officers his title and a physical description. In August 2000, C-103 contacted Detective Constable Dupuis and informed him that he had figured out that the person who had allegedly sexually abused him was Father Henri Legault. Father Legault died in 1985.

Richard Nadeau's Allegations

Project Truth received a third complaint of abuse at Classical College from Richard Nadeau. Mr. Nadeau was interviewed on November 14, 1997, and alleged that while he was a student at Classical College he had been abused by Father Hector Côté. Project Truth discovered that Father Côté had died in 1981.

Allegations Against Father Jean Primeau

On April 8, 1999, Project Truth was contacted by C-104 who alleged that he had been sexually abused by Father Jean Primeau and physically assaulted by two other priests at Classical College while he was a student there. Detective Constables Seguin and Don Genier interviewed C-104 and took a copy of a handwritten statement that C-104 had prepared about the abuse.

C-104 had met with Constable Perry Dunlop the previous day and disclosed this abuse to him. According to Constable Dunlop's will-state, he taped the interview but did not take a statement, and the tape was provided to Project Truth. C-104 told Detective Constables Genier and Seguin about this interview with Constable Dunlop.

A Crown brief was submitted to Crown Shelley Hallett on August 6, 1999. Father Primeau died on November 8, 1999. Crown Hallett testified that she read the brief but did not have time to write a written opinion before Father Primeau's death. However, Detective Inspector Pat Hall's notes show that he told Bishop Eugène LaRocque that Project Truth had received an opinion recommending that charges be laid, but had not set a charge date because they were looking into Father Primeau's health issues.

Notwithstanding this discrepancy, what is clear is that Father Primeau died before any charges could be laid.

Allegations About a "Pedophile Ring" at Classical College

Project Truth obtained some interesting information about Classical College when Detective Constable Dupuis interviewed Ron Wilson, a former Cornwall Police Service (CPS) officer, on July 28, 1999. When asked if he had knowledge about a pedophile ring in Cornwall, Mr. Wilson stated:

There was no doubt in my mind, in 1967, in the Cornwall Arena [sic], and what have you ah, from my knowledge, that there was ah, a ring running out of the ah, Classical College at the time. But not in the, in this modern day.

Mr. Wilson also mentioned there was a large investigation conducted by the Cornwall police into Classical College around 1967. According to Mr. Wilson, the investigation focused on Father Paul Lapierre and Father Donald Scott. Father Scott was a former student of the College. Father Lapierre did not work at the College, and his connection to it is unknown. Unfortunately, Mr. Wilson did not testify before this Inquiry. He was excused due to medical reasons.

On August 9, 1999, Detective Constable Dupuis spoke with Inspector Richard Trew at the CPS and requested the archival files surrounding Father Donald Scott, circa 1967. Inspector Trew said that he did not think the files went that far back but he would check. Detective Constable Dupuis told him not to worry about it because Father Scott was dead and he would get back to Inspector Trew if he needed the files at a later time. Detective Constable Dupuis testified that he did not recall doing any other follow-up on the information provided by Mr. Wilson.

Detective Inspector Hall testified he believed that Detective Constable Genier made some efforts to obtain these records from the CPS but said they could not get records that old. Detective Constable Seguin testified that he did not recall whether he followed up with the CPS about its investigation.

Linkages Between Project Truth Investigation and Classical College

As the Project Truth investigation moved forward, the officers became aware that some of the other individuals under investigation had links or alleged links to Classical College. For example, in the information provided to them by the Bishop, they learned that Fathers Romeo Major and Donald Scott had been students there.

In the year 2000, Project Truth became aware of a website called www.project-truth.com. Richard Nadeau posted a list of individuals on this website who he claimed were “priests at the college, associates or graduates from the college.” He did not specify the exact nature of the connections.

The list included a number of individuals who had been charged or investigated by Project Truth, including Fathers Lapierre, Scott, Primeau, Major, and Kenneth Martin. It also included Jacques Leduc.

Mr. Leduc was in fact a former student of the college, as were Ken Seguin and Nelson Barque.

I am not suggesting that these linkages are necessarily meaningful, but they certainly merited further exploration by the OPP. These connections also may have contributed to the rumours that existed about the school.

On the website, Mr. Nadeau speculated that a pedophile network began operating in Cornwall in the 1950s and that it began with Classical College.

Evaluation of Investigation of Classical College

The Project Truth officers were aware that there were serious allegations linked to Classical College and took a number of investigative steps in relation to this matter. Detective Sergeant Hall asked Bishop LaRocque for information about Father Primeau and Classical College. In a letter dated November 26, 1998, Detective Sergeant Hall made a general request to the Bishop for a list of students from Classical College as well as “information and photographs of staff” at Classical College during particular periods. The Bishop replied that this information was never in the possession of the Diocese, but gave Detective Sergeant Hall the name and address of the person to contact for these records.

Detective Constables Seguin and Genier obtained documents from the archivist of Les Clercs de Saint-Viateur relating to Classical College and Father Primeau in September 1999.

The officers also obtained the names of former students from some of the victims who came forward, and attempted to interview them.

Classical College was entered in Project Truth's ACCESS tracking system, and the Association Report allowed the officers to see which witnesses, victims, and suspects had a link with Classical College. However, this document only lists twelve names associated to Classical College, and it did not identify some of the individuals whose link to the school I have mentioned above, such as Mr. Seguin, Mr. Leduc, Mr. Barque, Father Major, and Father Scott. I am not aware whether the Project Truth officers knew of all of these connections at the time. However, these omissions indicate that there was not an extensive effort put into understanding all of the connections between the persons of interest to the investigation and the Classical College.

This said, after reviewing the evidence, it appears obvious to me that Project Truth performed substantial work on the allegations they received about Classical College, particularly in relation to C-104's complaints. However, it does not appear that they investigated Classical College itself in any systematic fashion. When Detective Constable Seguin was asked if there was ever a discussion at Project Truth about whether to look at Classical College as an institution, he replied:

Well, like I said, I think Don Genier had a file started on that or going on that. I don't know where he would have went with it, with all the people being deceased that we looked at. Everyone that I'm aware of, the alleged suspect was deceased.

In my view, there are at least two reasons the officers might have wished to pursue the matter further. First, Project Truth could have looked at Classical College as part of the conspiracy investigation to determine whether Classical College was the "haven" of the pedophile ring, as Mr. Nadeau claimed.

Second, further investigation might have revealed a significant number of victims. I heard testimony from Dr. Peter Jaffe that historically, institutions sometimes turned a blind eye to child sexual abuse. Where that happened a perpetrator might have felt he was "beyond reproach" and therefore was likely to continue to abuse children.

One of the difficulties of investigating allegations of historical sexual abuse is getting victims to come forward. Detective Wendy Leaver testified that making phone calls and knocking on doors is not the most effective approach. Where the allegation relates to an institution, like a school, it may be more helpful to use records to contact former students by letter, inform them of the investigation, and ask them to contact the police if they have any information. This way,

Detective Leaver stated, “potential victims get an opportunity to open up, to read it and make a decision.”

However, given the particular circumstances, there are also several reasons why it may not have been in the public interest for Project Truth to further investigate Classical College: the College was no longer operating; many of its priests and brothers had died or were very ill and therefore difficult to prosecute; and, given the passage of time, it would have been difficult to find former students. A full-scale investigation of Classical College would have required significant resources and might not have resulted in many charges. As already mentioned, resources for Project Truth were limited, and a broader investigation of the Classical College might have reduced resources available for other investigations. Moreover, a strategic decision had been made to investigate allegations that came to Project Truth, but not to actively seek out victims.

Although ideally the situation at Classical College should have been fully and thoroughly investigated, for the reasons set out above, the case-specific approach taken by Project Truth was not unreasonable. This said, further work should have been done to understand the connections between the various persons under investigation, both generally and in relation to Classical College. I explore Project Truth’s failure to conduct a proper linkage analysis more generally at the end of this chapter.

Investigation of Malcolm MacDonald for Sexual Abuse

Cornwall lawyer Malcolm MacDonald had many ties to the allegations investigated by Project Truth. He was a central figure in the Fantino Brief. Statements in the brief contained numerous allegations of abuse perpetrated by him; he was allegedly a member of the “clan” of pedophiles, and his cottage on Stanley Island was allegedly a central meeting place for members of the “clan.” Ron Leroux claimed that the cottage was the location of a “VIP meeting” just prior to the illegal settlement agreement made with David Silmser. Moreover, Mr. MacDonald represented Father Charles MacDonald in the settlement, and he had pleaded guilty to attempting to obstruct justice in relation to that matter in 1995. Detective Inspector Tim Smith also would have been aware, from his 1994 investigation, that Mr. MacDonald was linked to Ken Seguin and Father MacDonald as both a lawyer and a friend. Detective Inspector Smith was aware of rumours circulating prior to Project Truth that Mr. MacDonald “liked boys.” In addition, Mr. MacDonald was alleged to have made death threats against Constable Perry Dunlop and his family.

Accordingly, Project Truth investigated Mr. MacDonald both as an alleged perpetrator of sexual abuse and as part of its death threats and conspiracy

investigations. The officers investigated sexual assault complaints made by three individuals against Mr. MacDonald, and he was arrested and charged in relation to two of the complaints. He died before he could be tried for these offences.

Allegations of Abuse by Malcolm MacDonald

The Fantino Brief contained a number of statements that alleged that Mr. MacDonald had abused young people. Ron Leroux claimed that he had seen Mr. MacDonald having sex with a boy at the Saltaire Motel in Fort Lauderdale, Florida, and that he had seen him on Birch Avenue in Fort Lauderdale, a “known pick up spot” for young male prostitutes. Mr. Leroux also claimed that Mr. MacDonald would bring young boys and prostitutes to his cottage.

Mr. Leroux further alleged that Mr. MacDonald had Polaroid pictures of naked minors in his office, and C-8 claimed that Mr. MacDonald had shown him pictures of nude males, “some that are young and some that are adults.” C-19 alleged that Mr. MacDonald had given a young person, C-5, money for sex.

Detective Constable Steve Seguin was the lead investigator into allegations of abuse by Mr. MacDonald.

Allegations of C-5

C-5 was interviewed by Detective Constables Seguin and Joe Dupuis on September 30, 1997. C-5 told the officers that he was abused by Ken Seguin and that Mr. Seguin had introduced him to Mr. MacDonald when he was thirteen or fourteen years old. He claimed that Mr. MacDonald would give him money or drugs in exchange for sex. He also alleged that Mr. MacDonald had taken nude pictures of him in his office in Cornwall. In addition, C-5 told the officers that he had been abused by Father MacDonald. C-5’s complaint against Father MacDonald is described in the section “Project Truth Investigation of Father Charles MacDonald.”

Allegations of C-10

Prior to meeting with Project Truth, C-10 disclosed his allegations of abuse by Mr. MacDonald to Constable Perry Dunlop. C-10 contacted Constable Dunlop and met with him on January 19, 1998. They met again about a week later at Constable Dunlop’s home. According to C-10, “He steered me to the Project Truth investigation.”

On January 26, 1998, C-10 contacted Project Truth. On February 3, Detective Constables Seguin and Genier interviewed C-10, who alleged that he had been abused by a number of individuals, including Mr. MacDonald. He claimed that he was abused by his probation officer, Mr. Seguin, beginning when he was

thirteen to fourteen years old. Mr. Seguin referred C-10 to Mr. MacDonald for legal representation when he was fifteen or sixteen years old, and C-10 alleged that Mr. MacDonald subsequently abused him.

C-10 also alleged that he had been abused by Carl Allen and a Father Scott, although C-10 could not remember the priest's first name. As mentioned in the mandate section of this chapter, C-10's allegations against Mr. Allen were referred to the Cornwall Police Service for investigation. The officers eventually determined that the priest was Father Donald Scott, who died prior to Project Truth.

On June 26, 1998, Detective Constable Genier took a second statement from C-10 to clarify some of the details surrounding his alleged abuse by Mr. MacDonald and Mr. Seguin.

Allegations of C-21

The third individual to make allegations against Mr. MacDonald was C-21, whom Detective Constables Seguin and Genier interviewed on December 16, 1998. He alleged that he had been abused on numerous occasions by Jean Luc Leblanc. Some of this abuse occurred at Mr. Leblanc mother's cottage in Quebec. According to C-21, there were parties at the cottage where numerous adults would abuse children, and he claimed that he saw Mr. MacDonald at these parties, but he did not see him abuse anyone. C-21 also alleged that Mr. MacDonald had abused him once at the cottage.

Detective Constable Seguin testified that Detective Constable Genier passed information on to the police in Quebec regarding the alleged offences that took place in their jurisdiction. The Quebec police did not lay any charge based on these allegations.

As will be discussed in the section "Investigation of Jean Luc Leblanc," Mr. Leblanc was investigated by Project Truth. He was charged with and pleaded guilty to numerous sexual offences involving a number of complainants, including two charges related to C-21.

Interviews With Malcolm MacDonald

On June 8, 1998, Detective Constables Genier and Dupuis took cautioned statements from Mr. MacDonald relating to the allegations made by C-5 and C-10. Mr. MacDonald acknowledged that C-5 was a former client of his, but denied the allegations of abuse. He claimed not to know C-10.

On November 18, 1998, Detective Constables Seguin and Genier took another statement from Mr. MacDonald. The focus of the interview was the allegations made by Mr. Leroux. Mr. MacDonald was asked whether he had ever possessed nude male photographs. He denied the allegation.

Mr. MacDonald was interviewed again on December 17, 1999, by Detective Constables Seguin and Dupuis, this time specifically in relation to the settlement with David Silmser. They did not question him regarding the allegations of sexual abuse nor did they ask about the allegations made by C-21 regarding his connections to Mr. Leblanc. This was a missed opportunity. I note that in their investigation of Mr. MacDonald generally, the officers did not appear to pursue his linkages to other alleged perpetrators of sexual abuse. Further, despite allegations that he was in possession of nude photos of C-5 and possibly other young people, the Project Truth officers did not attempt to get a search warrant to obtain them.

Crown Opinion

On July 7, 1998, a Crown brief was submitted to Shelley Hallett. She did not provide an opinion until eight months later, on March 9, 1999. This delay is discussed in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Arrest and Release of Malcolm MacDonald

On March 11, 1999, Mr. MacDonald was charged with indecent assault and gross indecency in relation to C-5, and with indecent assault against C-10.

In May 1999, Detective Inspectors Smith and Hall travelled to Florida to investigate some of the allegations made by Mr. Leroux. They met with Fort Lauderdale police and asked if they had any information on Mr. MacDonald. The Fort Lauderdale police had no record of contact with him. The officers also went to the Saltaire Motel and spoke to the owner’s wife. She confirmed that Mr. MacDonald was a client, that he may have had male guests at night, but that he was “no trouble.” In a written interview, the motel owner later told Detective Inspector Hall that “I have never-ever witnessed any sexual misconduct with anybody staying at Saltaire motel.” Project Truth’s investigation of the allegations in Florida is discussed in greater detail in the “Conspiracy Investigation” section of this chapter.

Death of Malcolm MacDonald

Mr. MacDonald died in Fort Lauderdale, Florida, on December 23, 1999, and on January 11, 2000, the Crown withdrew all charges against him. Detective Inspector Hall testified that they were aware that Mr. MacDonald travelled to Florida in the wintertime.

I do not find the delay in investigating this matter unreasonable in the circumstances. It is unfortunate that Mr. MacDonald was not charged until March 11, 1999, but that was in large part due to the delay in obtaining an opinion from the Crown, which is described in Chapter 11.

C-8's Allegations Against Ron Leroux and Jacques Martell

As noted in previous sections in this chapter, C-8 was a complainant in the Marcel Lalonde and Father Charles MacDonald cases. He had spoken to Constable Perry Dunlop, Constable Dunlop's lawyer, and others during Constable Dunlop's private investigation in 1996 and 1997, and had provided them with statements, some of which were included in the Fantino Brief. C-8 also provided statements to Detective Constable Don Genier in January 1997, prior to the inception of Project Truth.

During the course of Project Truth, the Ontario Provincial Police (OPP) investigated and prepared Crown briefs in relation to two other allegations made by C-8. He alleged that he had been abused by Ron Leroux and by Jacques Martell. No charges were laid in either case. As described in the section "Investigations of Complaints of Ron Leroux and C-15," Mr. Leroux was himself an alleged victim of sexual abuse. He was also a key complainant in the Fantino Brief and in support of Constable Perry Dunlop's amended statement of claim in his civil action against the Cornwall Police Service (CPS) and others.

Statements to the OPP on January 23, 1997

The OPP first became aware of C-8's allegations against Mr. Leroux in January 1997, prior to Project Truth. On January 23, 1997, C-8 gave two statements to the OPP, in respect of his allegations against Father MacDonald and Mr. Lalonde. In the statement dealing with Mr. Lalonde, C-8 claimed that Mr. Leroux assaulted him and that this abuse occurred after the abuse by Mr. Lalonde. C-8 explained that he met Mr. Leroux and moved in with him when he was fifteen years old. As C-8 described it in his testimony, Mr. Leroux "got Mr. Lalonde away from me."

Detective Constable Don Genier, who was conducting the interview, asked C-8 if he would be willing to give another video statement about these allegations against Mr. Leroux and C-8 agreed. I have seen no evidence to indicate that a further statement was taken at this time specifically in relation to the allegations against Mr. Leroux. During both of these interviews, C-8 also alleged that three other men "came on to him." It does not appear that Detective Constable Genier asked any follow-up questions about these three individuals, although C-8 was later interviewed in respect of his allegations against Jacques Martell. This interview will be discussed below.

C-8 was interviewed again by Detective Constables Genier and Chris McDonell on February 27, 1997. The statement was primarily about his contacts with Constable Dunlop. In this statement, he told the officers that he had told Constable Dunlop about his alleged abuse by Mr. Leroux.

Statements Contained in the Fantino Brief and in Other Disclosure Provided by Constable Perry Dunlop

The Fantino Brief, which formed the basis of the Project Truth investigation, contained a statement from C-8 that dealt primarily with his alleged abuse by Father MacDonald and Mr. Lalonde. C-8 mentioned in the statement that he lived with Mr. Leroux and that Mr. Leroux showed him nude photographs of “young kids,” but he did not mention any sexual contact.

Constable Dunlop later provided notes to Project Truth in October 1997 that identified Mr. Leroux as a possible “pedophile” but did not specifically link him to C-8.

C-8 Is Interviewed About His Allegations Against Ron Leroux

A year and a half after C-8’s initial statement to Detective Constable Genier, Detective Constable Joe Dupuis interviewed C-8 about his allegations against Mr. Leroux on May 12, 1998. In his statement, C-8 explained how he met Mr. Leroux. C-8 was fifteen years old when he moved in with Mr. Leroux, who was approximately seventeen years older than him. As mentioned in his testimony, C-8 moved in with Mr. Leroux because he “had nothing else to do” and Mr. Leroux was like a big brother. C-8 alleged that the abuse began after he moved in with Mr. Leroux, although there had been an earlier overture. He mentioned the gifts Mr. Leroux bought him, including a car, a bike and jewellery. C-8 also said that Mr. Leroux convinced him to drop out of school and did not want him to have a girlfriend.

C-8 alleged that at one point he was ready to move out and Mr. Leroux “freaked out,” pointed a gun at his head, and said, “You’re not leaving, or I’ll kill ya.” C-8 also said that Mr. Leroux kept telling him he was going to kill himself. C-8, who was twenty-two or twenty-three years old at the time, stayed following this threat. He told Detective Constable Dupuis that it was hard for him to leave because “if I leave then I got this on my conscious [sic].” C-8 moved out a few years later around the fall/summer of 1992, at the age of twenty-five.

When asked how many incidents of abuse there were, C-8 responded that between ten and a thousand, the number of incidents was closer to a thousand. Detective Constable Dupuis asked if there was any consent in the encounters with Mr. Leroux. C-8 replied, “No, I never told him he could do anything ... I

never, I never said yes, I always said no. I never once said yes.” He told Detective Constable Dupuis about a young boy who moved in with Mr. Leroux before he did. C-8 thought the boy was thirteen or fourteen years old at the time. Detective Constable Dupuis subsequently interviewed this individual, who said he lived with Leroux for one and a half years when he was seventeen or eighteen years old. He told Detective Constable Dupuis that Mr. Leroux had not tried to do anything of a sexual nature. This person refused to give a formal statement, and Detective Constable Dupuis noted that it was apparent that this individual was afraid of Mr. Leroux.

C-8 also discussed the fact that around 1991, Mr. Leroux transferred to him the title of the property where they had both lived for a number of years. In 1992, they entered into an agreement, prepared by lawyer Malcolm MacDonald, which provided that the house belonged to C-8 but Mr. Leroux could stay there, and that when and if the property was sold, C-8 would pay Mr. Leroux \$80,000. C-8 indicated that Mr. Leroux later chose to move out and wanted money to move in with his girlfriend in the United States, so C-8 gave him the balance of the money he owed him. C-8 then moved back into the house. C-8 believed this was in late 1993 or early 1994, after the suicide of Ken Seguin.

On December 10, 1998, Detective Constable Dupuis interviewed C-8 again, asking him some clarifying questions about the alleged threats by Mr. Leroux that C-8 mentioned in his May 1998 interview.

Ron Leroux Not Aware of Investigation

Mr. Leroux testified that he met C-8 in September 1979 or 1980 and that C-8 lived with him for ten to twelve years beginning when he was approximately sixteen years old. Mr. Leroux acknowledged that during the time C-8 lived with him, their relationship became more than platonic. According to Mr. Leroux, he was not aware an investigation was conducted into sexual abuse allegations made by C-8 against him. He did not remember ever being interviewed as an alleged perpetrator.

Mr. Leroux was interviewed by two OPP officers in Orillia on February 7, 1997. During this interview, the officers asked Mr. Leroux if he had been in a homosexual relationship, at which point Mr. Leroux told them about meeting C-8 who was sixteen years old at the time. However, he said that the sexual relationship did not begin until C-8 was eighteen or nineteen. Mr. Leroux testified that during this interview the officers did not seem to be suggesting that they were investigating a crime. I have not heard any evidence to indicate that the officers who conducted this interview were aware of the allegations made by C-8, as Mr. Leroux was being interviewed in relation to his own abuse and other matters.

Mr. Leroux was interviewed again by the OPP on November 25, 1997. At the outset of the interview, Detective Constable Genier stated that the interview is about “sexual abuse information and allegations” in the Cornwall area. Partway through the interview, Mr. Leroux was asked about his relationship with C-8. He told the officers that the sexual relationship with C-8 did not begin until C-8 was twenty-one years old. It is apparent that neither of these two interviews was specifically in relation to the abuse alleged by C-8 against Mr. Leroux. Both of these interviews occurred before C-8 provided a statement to Detective Constable Dupuis in May 1998. It does not appear that an attempt was made to take a cautioned statement from Mr. Leroux as part of the investigation into C-8’s allegations.

Crown Brief Submitted for Recommendation

A Crown brief was prepared and submitted to the Crown for a recommendation on or about February 9, 1999. On September 20, 1999, Crown Paul Vesa provided an opinion on the Leroux matter. He determined that there was no reasonable prospect of conviction, based on a number of factors:

- C-8’s allegations were uncorroborated and depended almost entirely on C-8’s evidence.
- C-8 did not come forward at an early stage about these allegations. He gave several statements about other matters in which he did not mention allegations against Leroux.
- C-8 lived with Leroux for approximately twelve years, well into his adult life, and for a lot of the period, Mr. Leroux was not in a position of power over C-8.
- C-8’s criminal conviction for sexual assault would affect his credibility.
- There was evidence showing that C-8 had an animus against Mr. Leroux.

Investigation of Jacques Martell

C-8 also alleged that he had been abused by a man named Jacques Martell. Mr. Martell was interviewed by Detective Constable Dupuis on December 10, 1998, and a cautioned statement was obtained. He admitted to a few sexual encounters with C-8 but said the sex was consensual. A Crown brief was prepared and submitted to the Crown for recommendation on February 9, 1999. On or about February 25, 1999, Crown Alain Godin provided an opinion that there was insufficient evidence to proceed.

C-8's View of the Investigation

C-8 testified that he did not recall anything happening concerning his allegations against Mr. Leroux. He did not remember anyone telling him that a Crown attorney gave an opinion nor explaining why charges were not going to be brought. He said, "As far as I'm concerned it just didn't go anywhere. It was just a waste of my time."

Unfortunately, Detective Constable Genier did not testify, and I have not seen any evidence about why C-8 was not interviewed sooner, either before or during Project Truth, in relation to his allegations of abuse against Mr. Leroux and Mr. Martell. I am therefore unable to make any findings on this point. However, I am concerned about the length of the delay and its impact on C-8.

This said, C-8 and his alleged abusers were interviewed, and the complaints were investigated. Briefs were prepared and submitted to the Crown, who advised that the OPP should not proceed with charges in either case.

Investigation of Jean Luc Leblanc

Jean Luc Leblanc was convicted in 1986 of gross indecency relating to the molestation of young boys. He received a suspended sentence and was placed on probation for three years. In August 1998, the mother of one of the boys abused by Mr. Leblanc contacted the Cornwall Police Service (CPS) after Mr. Leblanc was seen in the company of young boys in and around Cornwall. The CPS passed on her concerns to the Lancaster Detachment of the Ontario Provincial Police (OPP), which did not pursue the matter.

Project Truth became aware of Mr. Leblanc in December 1998 and launched an investigation that led to his eventual conviction on eighteen charges related to sexual abuse.

Failure of OPP to Respond to Complaint in Fall 1998

Vivian Burgess contacted the CPS in August 1998 and notified them that Mr. Leblanc had been seen with young boys between the ages of eight and twelve in and around Cornwall. Mr. Leblanc had been charged twelve years earlier of sexually abusing her two sons, and Ms Burgess was very concerned that he might "be continuing his behaviour of the past."

On September 10, 1998, Constable George Tyo of the Cornwall police contacted Detective Sergeant Randy Millar of the OPP Lancaster Detachment and advised him of the complaint from Ms Burgess. Constable Tyo provided Detective Sergeant Millar with the Ontario Municipal and Provincial Police Automation

Cooperative (OMPPAC) number related to the complaint and further advised that Mr. Leblanc was living in Newington, a small town in OPP jurisdiction.

The day after his conversation with Detective Sergeant Millar, Constable Tyo entered a supplementary occurrence report in OMPPAC. The report noted that Constable Tyo “relayed all information to him [Millar] so that they could conduct appropriate checks on Jean Luc Leblanc in their jurisdiction.” The report further stated, “No further action, unless requested by the OPP.”

Detective Inspector Millar, however, testified that he did not remember Constable Tyo telling him that this information was relayed to him for that purpose. Detective Sergeant Millar did not read either of the occurrence reports despite having access to them through OMPPAC.

The OPP took no action on the information provided by Constable Tyo. Detective Sergeant Millar did not direct any of his officers to investigate Mr. Leblanc, and Ms Burgess was not contacted to see if she had any additional information.

Detective Inspector Millar testified that his plan was to set up surveillance on Mr. Leblanc, but that no steps were taken because he lacked the officers. Detective Sergeant Millar was facing a serious resource problem at that time. Five of his detectives had been seconded to other units, including Project Truth. In addition, Detective Sergeant Millar’s detachment was busy investigating a number of homicides, an attempted murder, and multiple robberies and sexual assaults. Detective Inspector Millar testified that the Jean Luc Leblanc matter was given low priority because no offence had been reported. According to Detective Inspector Millar, in order to investigate the Leblanc complaint, he would have had to put aside investigations into reports of actual sexual assault.

Detective Sergeant Millar informed his supervisors on a regular basis that he was having serious resource problems and requested assistance. This included meeting with Superintendent Carson Fougère, Director of Operations, Eastern Region, on November 20, 1998. Following the meeting, Superintendent Fougère discussed Detective Sergeant Millar’s concerns with Rick Deering, Director of Support Services, Eastern Region, and Chief Superintendent R.J. Eamer, and was told that there were no more resources. Detective Sergeant Millar had to make do with what he had.

Detective Inspector Millar testified, and the OPP conceded in submissions before me, that less resource-intensive measures were available. At minimum, Detective Sergeant Millar should have put out a “Zone Alert,” a printed bulletin informing officers that Mr. Leblanc was living in the area and directing them to identify any young boys he was seen with. Detective Sergeant Millar also should have informed his superiors of the information received.

It is impossible to determine whether Detective Sergeant Millar would have received additional resources had he indicated that these were necessary to conduct surveillance on Mr. Leblanc. I accept Detective Inspector Millar's evidence that he had repeatedly made his supervisors aware of the lack of resources. However, as Detective Inspector Millar admits, he never asked for resources specifically to deal with the Jean Luc Leblanc matter. In my view, he did not see it as sufficiently important. Detective Inspector Millar testified, "I was telling him [Millar's supervisor] that I didn't have sufficient resources to deal with real occurrences, actual offences. There is no offence. It would have been a nicety to be able to do surveillance on Leblanc."

In his testimony before me, Detective Inspector Millar said that he also chose not to take action because Mr. Leblanc could have been with the boys for legitimate reasons (e.g., they were relatives) and because, based on the information received, Detective Inspector Millar believed that any offences that had occurred would have taken place within CPS jurisdiction. These justifications were not mentioned in Detective Inspector Millar's will-state, nor in his evidence before the Police Services Board.

Having reviewed the evidence, I find that the failure to respond to the information relating to Mr. Leblanc can be attributed first to the lack of resources available at the Lancaster Detachment but also, and importantly, to a failure to recognize the dangers of a convicted sexual offender associating with children. There was sufficient awareness of those dangers in 1998 that the report about Mr. Leblanc should have been given higher priority. Notwithstanding the serious resource constraints he was operating under, I find that Detective Sergeant Millar could and should have taken some action in relation to the information received from CPS about Mr. Leblanc.

Project Truth Becomes Aware of Allegations Against Jean Luc Leblanc

Mr. Leblanc first came to the attention of Project Truth officers on December 15, 1998, during the Malcolm MacDonald investigation. A witness indicated that C-21 had been abused by Mr. Leblanc as well as by Mr. MacDonald.

On the evening of December 16, 1998, Detective Constables Steve Seguin and Don Genier interviewed C-21. He alleged that Mr. Leblanc had abused him on many occasions, approximately ten to fifteen years before when he was between the ages of eleven and fifteen. C-21 also alleged that Mr. MacDonald had abused him at a cottage belonging to Mr. Leblanc's mother.

Detective Sergeant Pat Hall reviewed C-21's statement the following day. Detective Sergeant Hall, Detective Inspector Tim Smith, and the other Project Truth officers were of the view that there were insufficient reasonable and probable grounds to arrest Mr. Leblanc at that time based on C-21's statement alone. They

believed they needed further corroboration of the allegations, given that they were historical and of a somewhat unusual nature. All of these officers dispute the finding of a Police Services Board investigation into Detective Sergeant Millar's failure to take action on the information he received about Mr. Leblanc in September 1998. The Police Services Board found that Project Truth had sufficient grounds to arrest Mr. Leblanc on December 17, 1998. Given the decision of the officers not to arrest Mr. Leblanc on that date, I believe they took appropriate action in subsequently initiating surveillance quickly.

Detective Constable Seguin was assigned to be the lead investigator into the allegations against Mr. Leblanc. On December 17, 1998, he conducted an OMPPAC and Canadian Police Information Centre search on Mr. Leblanc, and learned that he had been convicted of sexual offences in 1986. He also discovered the occurrence reports entered by the CPS officers on August 7 and September 11, 1998, and learned that Detective Sergeant Millar had received information about Mr. Leblanc on September 10, 1998. Detective Sergeant Hall contacted Detective Inspector Smith and advised him of C-21's allegations and the OMPPAC reports. Detective Inspector Smith determined that surveillance should be conducted on Mr. Leblanc.

On December 18, 1998, Detective Inspector Smith contacted Detective Sergeant Millar and learned that nothing had been done with the information he had received because of a lack of manpower. Detective Inspector Smith insisted that some action needed to be taken. Accordingly, arrangements were made for Project Truth officers to conduct surveillance jointly with officers from Detective Sergeant Millar's detachment.

Surveillance of Jean Luc Leblanc

Surveillance began on December 21, 1998, but was called off early that day due to freezing rain and fog. Surveillance continued on December 22, 24, 29, and 30.

On December 29, 1998, Detective Constable Dupuis observed Mr. Leblanc in his car with a young person who was approximately fourteen years old. Detective Constable Dupuis followed the vehicle until it went down a dead-end road. When the vehicle came back, the youth was no longer with Mr. Leblanc. Detective Constable Dupuis followed Mr. Leblanc but eventually lost him. He then attempted, unsuccessfully, to locate the boy.

Detective Constable Seguin located the boy, C-82, the next day. Detective Constables Seguin and Dupuis conducted an interview of C-82. Although initially afraid to disclose the abuse, C-82 eventually confirmed that Mr. Leblanc had sexually assaulted him and added that the abuse had occurred as recently as the week before the interview.

Decision to Delay Arrest

Detective Constable Dupuis informed Detective Sergeant Hall of C-82's allegations the next morning, on December 31, 1998. Detective Constable Dupuis advised Detective Sergeant Hall that in his opinion, there was no one else in danger over the holidays. C-82 had been taken out of danger because his parents had been informed of the abuse, and C-82 did not say that Mr. Leblanc was abusing anyone else. Detective Inspector Hall testified that he trusted Detective Constable Dupuis' judgment on this issue. Detective Constable Dupuis, on the other hand, testified that he was not involved in the decision on the timing of the arrest. The officers were aware at this point that Mr. Leblanc was a school bus driver.

Detective Sergeant Hall then contacted Detective Inspector Smith. They discussed the issue, and ultimately Detective Inspector Smith decided not to arrest Mr. Leblanc immediately. Instead, they would wait until January 5, 1999. This was the first day back to school after the holidays. The fact that it was New Year's Eve was a factor in the decision. Detective Inspector Hall testified that he agreed with Detective Inspector Smith's decision at that time.

The officers agreed that in retrospect, they should have arrested Leblanc on December 31, 1999. In my view, Detective Constables Dupuis or Seguin should have contacted Detective Sergeant Hall on December 30, immediately following the interview with C-82. This would have permitted Detective Sergeant Hall or Detective Inspector Smith to confirm the arrest for that evening or the next morning.

Detective Inspector Smith made the following comment at the hearing:

We discussed it and ultimately it was my decision, and probably the worst decision I had made in my whole career, to not arrest but to arrest him in five days time. And fortunately between that time and the time he was arrested, nothing happened but I had left myself wide open for something that could have been catastrophic.

...

... [I]t was a bad decision, poor judgment on my part.

Arrest of Jean Luc Leblanc

On January 4, 1999, Detective Sergeant Hall contacted Richard Abell of the Children's Aid Society (CAS). Detective Sergeant Hall informed Mr. Abell that Mr. Leblanc would be arrested the following day and gave him the names of the victims, C-21 and C-82, as well as other information about the families and the offences. Detective Sergeant Hall also contacted Crown Attorney Murray MacDonald, who told him that there was no problem with his office taking on the

prosecution of Mr. Leblanc. This was despite the fact that Crown MacDonald remained, at that time, a person of interest in Project Truth's conspiracy investigation. Finally, Detective Sergeant Hall contacted Detective Sergeant Millar and CPS Staff Sergeant Luc Brunet and informed them of the upcoming arrest of Mr. Leblanc.

The same day, Detective Constable Genier contacted the Sureté du Québec and informed them of the allegations that involved events in the Gatineau area at Mr. Leblanc's mother's cottage.

Detective Constables Seguin and Genier arrested Mr. Leblanc at his home on the morning of January 5, 1999. Mr. Leblanc was charged with twelve counts relating to the alleged sexual abuse of C-21 and C-82. He was handcuffed and taken to the detachment. He was granted bail later that day under a number of conditions, including that he refrain from associating with persons under age sixteen unless accompanied by an adult or parent.

Contact With the Children's Aid Society

On January 7, 1999, Detective Constable Seguin was contacted by Brian MacIntosh of the CAS (see Chapter 9, on the institutional response of the CAS). The contact between CAS and the Ontario Provincial Police was made not as a result of any protocol, but only because Mr. MacIntosh had seen Mr. Leblanc's name in the newspaper. Mr. MacIntosh told Detective Constable Seguin that the CAS had visited Mr. Leblanc's residence in the summer of 1998 and found a young person, C-81, present at the time. The CAS learned that C-81 had been living at Mr. Leblanc's residence for several weeks but C-81 did not report any abuse.

Project Truth officers had further contact with the CAS in the course of investigating the allegations against Mr. Leblanc. Detective Constable Dupuis had several contacts with Pina DeBellis and Bill Carriere, who shared with him the information in their files relating to C-82. The CAS also assisted the OPP by putting Detective Constable Dupuis in touch with a young person who had run away from foster care to spend time with Mr. Leblanc. Detective Constable Seguin described Mr. Carriere as being helpful in his investigation.

It is noteworthy that CAS was not contacted by the Project Truth team when they first learned of allegations against Mr. Leblanc. Nor were they contacted by Detective Sergeant Millar when he learned of concerns in September 1998. This lack of coordination and cooperation is troublesome. Dr. Peter Jaffe, an expert on the institutional and community response to child sexual abuse, testified before me that cases of sexual assault with multiple victims and multiple accused are so

complex that they can quickly overwhelm local resources. For this reason, it is crucial that all agencies—the police, the Crown, and child protection services—work collaboratively.

In its submissions to this Inquiry, the OPP emphasized the need for a standardized protocol that would provide for consistent roles for the CAS and the police in sexual abuse investigations, including historical sexual abuse investigations. I endorse the development of such a protocol.

As noted in the introduction to this chapter, until 2003 the Ontario Police College and the Ontario Association of Children's Aid Societies delivered joint training on investigating offences against children. Almost all observers, including police, child welfare organizations, and experts on child sexual abuse, view the end of this joint training as a significant loss. The interaction that occurs during joint training builds better day-to-day relationships and also allows organizations to understand and benefit from the perspectives and expertise offered by other organizations. Clearly a stronger relationship between OPP officers and CAS workers could have enabled the sharing of information in the Leblanc case. I reiterate here my recommendation that the reinstitution of such training should proceed immediately and include specific training on responding to historical allegations of abuse.

Further Investigation of Jean Luc Leblanc

C-81 was interviewed by the OPP on January 12, 1999, and denied that any abuse had taken place. The OPP continued to investigate the matter, and in an interview on April 12, 1999, C-81 disclosed that he had been abused by Mr. Leblanc.

Project Truth also discovered a number of new alleged victims of Mr. Leblanc. One of these victims was Cindy Burgess-Lebrun. She is the sister of Jody Burgess, whom Mr. Leblanc was convicted of molesting in 1986 (see Chapter 6, on the institutional response of the Cornwall Community Police Service). Ms Burgess-Lebrun testified that Detective Constables Seguin and Dupuis arrived at her home unexpectedly on February 10, 1999, to ask her about Mr. Leblanc. She did not know about Project Truth and was angry that they came to see her without advising her first. Describing the shock of being asked about Mr. Leblanc unexpectedly, Ms Burgess-Lebrun said it was like “a train hit me.”

Detective Constable Dupuis testified that he thought that he had contacted her in advance, but he was not 100 percent certain. There is a note in Detective Constable Dupuis' notebook that indicates that on February 9, 1999, he had made an appointment to meet Ms Burgess-Lebrun the following day. Detective Constable Dupuis stated that it was preferable to contact victims of abuse in advance, and Detective Constable Seguin testified that it was their practice to

contact victims before an interview and tell them that they would like to speak to them about the alleged perpetrator. Detective Constable Seguin also testified that Ms Burgess-Lebrun did not seem surprised to see them.

Ms Burgess-Lebrun testified that the officers interviewed her the day *after* she met them at her house. However, both officers' notes indicate that they met her at her house on the day of the interview, and that they proceeded shortly afterward to the Prescott Detachment for a videotaped interview.

Further Charges Laid

On March 11, 1999, Project Truth officers arrested Mr. Leblanc again on sixteen counts of sexual offences in relation to six additional alleged victims. On March 12, Detective Inspector Hall contacted Mr. Abell of the CAS and informed him of these additional victims and charges.

The day of the arrest, Mr. Leblanc, through his lawyer, provided Project Truth with the names of eight individuals to talk to. In the following months, Project Truth attempted to contact these individuals. Four of them provided statements alleging sexual abuse by Mr. Leblanc. Further charges were laid on July 27, 1999, in relation to these four individuals. Three others did not wish to provide statements, and one could not be located.

In November 1999, Detective Constable Dupuis was contacted by Jason Tyo. Mr. Leblanc had been convicted of abusing him in 1986 (see Chapter 6). Mr. Tyo informed Detective Constable Dupuis that the abuse had continued after Mr. Leblanc's initial conviction. Mr. Tyo had never before disclosed this to the police, not even in the statement he gave to Project Truth officers in February 1999. He testified that he came forward because "[i]t was just tearing me apart. I had enough. I wanted to get it off my chest and report it." Additional charges were laid against Mr. Leblanc on April 7, 2000, for these allegations.

In total, fifty-one charges were laid against Mr. Leblanc in relation to thirteen victims.

After charges were laid, Project Truth officers continued to be involved in the case in various ways. In addition to victim liaison, the officers referred some victims to counselling, and assisted at least some of the victims with their victim impact statements and with applications for compensation from the Criminal Injuries Compensation Board. Other victims claimed that they had to do this themselves.

A number of the victims had positive things to say about their interactions with Project Truth officers. Mr. Tyo described them as considerate and understanding. Scott Burgess described the OPP's response as quick and thorough. However, Ms Burgess-Lebrun had a mixed evaluation of the OPP's response. She said that she had good contact with the OPP officers, but she also said that

she felt that she was “just left in the blue” after the interview. The officers did call her to tell her that Mr. Leblanc had been charged and advised her of court dates, but she felt there had been very little contact.

Sentencing of Jean Luc Leblanc

On March 26 and June 7, 2001, Mr. Leblanc pleaded guilty to eighteen of the fifty-one charges. The remaining charges were withdrawn (see Chapter 11, “Institutional Response of the Ministry of the Attorney General”).

Beginning in fall 2001, the Crown applied to have Mr. Leblanc declared a dangerous offender, or alternatively, a long-term offender (see Chapter 11). The OPP provided some support to the Crown in gathering evidence for this application. Detective Constable Dupuis was tasked with obtaining Mr. Leblanc’s file at the CAS. On October 25, 2001, Detective Constable Dupuis wrote in his duty notebook:

Advised that CAS does have a file—Leblanc, Jean Luc, registered as a sex offender. They will not give police any info out of this file. They stated that they fear being sued by Leblanc if they gave info. Carriere also advised that all the info came from police source but will not advise what police force or when they got info other than files date 1988.

Neither Detective Constable Dupuis nor Mr. Carriere had an independent recollection of this conversation. Mr. Carriere testified that this incident is contrary to his practice. He stated that he may have told Detective Constable Dupuis that he could not provide anything out of the files without a subpoena, but said that he would have let Detective Constable Dupuis see the file and there is no reason he would refuse to tell him the police force referred to. Mr. Carriere apologized for this incident if it did occur.

On April 22, 2002, Mr. Leblanc was declared a long-term offender.

The Police Services Board Complaint

On December 11, 2003, just prior to his retirement, Detective Inspector Hall met with Detective Inspector Colleen McQuade, the officer who would be taking over for him in Project Truth. He told her about Detective Sergeant Millar’s failure to take action on the information he received about Mr. Leblanc in September 1998. Detective Inspector Hall advised her that this inaction had been reported to various managers in the Eastern Region and nothing had been done.

On December 30, 2003, Detective Inspector McQuade met with Detective Superintendent Ross Bingley, Director of the Criminal Investigation Branch, and advised him of Detective Inspector Hall's concerns.

In November 2004, the Premier of Ontario announced the Cornwall Public Inquiry. In its preparations for this Inquiry, the OPP identified Detective Sergeant Millar's failure to act as a possible "pressure point" and therefore initiated a Professional Standards Bureau investigation into the matter in the fall of 2005.

The Police Services Board report concluded:

It is fairly obvious that Randy Millar was overwhelmed. He made extraordinary efforts to try and obtain more personnel and resources in order that he could adequately meet the demands of the crime unit mandate. Almost on a weekly basis he met or phoned a supervisor in Eastern Region and pleaded for more resources without success.

Despite these findings, the Police Services Board decided that Detective Sergeant Millar was in neglect of his duties because he "failed to report a matter that was his duty to report." No lack of resources or heavy workload could "possibly preclude him from making a telephone call to his supervisors ... and also sharing the information with his subordinates." The Board suggested that had Detective Sergeant Millar reported the matter, his supervisors might have provided additional resources. In his testimony before me, Detective Inspector Millar testified that he disagreed with these findings. As set out above, I agree with the conclusion of the Police Services Board that he should have informed his supervisors about the Jean Luc Leblanc matter.

Despite these findings, Detective Inspector Millar was not disciplined. The complaint was filed well after the six-month limitation period under the *Police Services Act*.

In fall 2005, a parallel investigation was launched to look into Detective Inspector Hall's assertion that he had brought Detective Sergeant Millar's inaction to the attention of more senior officers and that they had failed to act. The investigation found that there was insufficient evidence to support the allegations made by Detective Inspector Hall. In particular, it noted that when Detective Inspector Hall was promoted to detective inspector in April 1999 and took over as case manager for Project Truth, he was in an ideal position to initiate an internal complaint against Detective Sergeant Millar. "For whatever reason," the Board noted, "he chose not to."

Based on my review of the evidence, I agree with the findings of the Police Services Board. Detective Inspector Hall testified that he did not question Detective

Sergeant Millar or comment on his inaction because they were of the same rank. However, Deputy Commissioner Chris Lewis testified that anyone in the OPP can make a Police Services Board complaint about another officer, and that Detective Inspector Hall would have been aware of this fact. Detective Inspector Hall was also aware from his work as a *Police Services Act* investigator that there is a six-month limitation period for filing a complaint. Detective Inspector Hall testified that he did not file a complaint, nor did he specifically ask anyone else to.

Detective Inspector Smith testified that he had addressed Detective Sergeant Millar's inaction directly with him. Detective Inspector Smith said that he "dressed him down a touch" and that Detective Sergeant Millar acknowledged that he should have done something. As far as Detective Inspector Smith was concerned, that was the end of the matter, and he did not report Detective Sergeant Millar's conduct or instruct Detective Inspector Hall to do so.

Investigation of Bernard Sauvé

As discussed in the section "Project Truth's Mandate," in the spring of 1998, Project Truth became aware that C-66 had reported allegations of abuse by Bernard Sauvé. C-66 told the Cornwall Police Service (CPS) about this abuse in March 1997, while talking to CPS Sergeant Brian Snyder about abuse allegedly perpetrated by Marcel Lalonde. C-66's complaint against Mr. Sauvé was not investigated by the CPS, but his complaint against Mr. Lalonde was. Detective Inspector Tim Smith and Detective Sergeant Pat Hall decided that Project Truth should take on the complaint against Mr. Sauvé.

Detective Constable Don Genier was assigned as investigating officer in the Bernard Sauvé matter. He initially contacted C-66 on May 12, 1998, to schedule an interview for the next day. A few hours later, he received a call from Constable René Desrosiers of the CPS, who said that C-66 was very fragile and that the call from the Ontario Provincial Police (OPP) had made him nervous. Detective Sergeant Hall and CPS Inspector Richard Trew discussed the matter, and Detective Constable Genier decided to "hold off for now."

C-66 called Detective Constable Genier on May 21, 1998, to ask why the interview had not gone ahead and what the OPP wanted to speak with him about. He told Detective Constable Genier that Mr. Sauvé had abused him when he was a teenager working at Mr. Sauvé's convenience store. The officer's notes of this discussion state that C-66 "is very willing to disclose" the sexual assault allegations against Mr. Sauvé. Detective Constable Genier took a statement from C-66 on May 22, 1998, regarding these allegations of sexual abuse. During the

interview, Detective Constable Genier asked C-66 about the concerns he had with their first scheduled interview. C-66 answered that when he first received the call from Detective Constable Genier he did not understand why the OPP wanted to meet with him and decided to call CPS Constable Desrosiers, whom he knew. Constable Desrosiers was not in, and C-66 spoke with Sergeant Snyder to obtain more information. Sergeant Snyder had told C-66 that he would speak to Detective Constable Genier about the allegations. Having not heard back from either of them, C-66 decided to call back Detective Constable Genier.

An officer from either the CPS or the OPP should have contacted C-66 and informed him of the reasons for Detective Constable Genier's initial call. Not only is this a basic courtesy, but keeping an alleged victim informed is an essential part of victim support.

Following further investigations, a Crown brief was prepared and submitted on November 2, 1998. On February 2, 1999, Crown Attorney Robert Pelletier recommended that charges be laid against Mr. Sauvé. He was arrested and charged on March 11, 1999, based on the allegations of C-66. According to Detective Inspector Hall, Mr. Sauvé was legally blind and in poor health at the time of his arrest.

The following day, Detective Sergeant Hall informed Richard Abell of the Children's Aid Society of the arrest and gave him C-66's name.

An additional complainant came forward after the charges were laid against Mr. Sauvé, possibly due to publicity surrounding the arrest. A further Crown brief was prepared and forwarded to Crown Attorney Curt Flanagan on May 11, 1999, for a Crown opinion on charges. Further to Mr. Flanagan's opinion, more charges were laid against Mr. Sauvé on July 28, 1999, for the alleged abuse of this new complainant.

The preliminary inquiry in the Bernard Sauvé matter took place April 4 to 6, 2000. Mr. Sauvé was committed to stand trial, and a trial date was set for June 2001. The trial date was adjourned for close to a year due to the accused's problems with his heart, diabetes, and blood pressure.

On June 17, 2002, the day the Bernard Sauvé matter was to proceed to trial, the Crown withdrew all charges, partly because of Mr. Sauvé's health, but primarily because the complainants were not able to proceed given the "extreme anxiety and stress related to Court" and the fact that "they may not be able to endure testifying in Court."

In total, more than five years had passed since C-66 first told the CPS about his allegations against Mr. Sauvé. The effect of a lengthy court process on alleged victims and how this can be mitigated by the intervention of victim services is further discussed in Chapter 11, "Institutional Response of the Ministry of the Attorney General." This is an example of alleged victims of historical

sexual abuse having difficulties in coping with the court process. This said, the delay in this case is not attributable to the OPP. Faster court dates and better victim services would have helped to mitigate the stress caused to the alleged victims by delay.

Investigations of Complaints of Ron Leroux and C-15

As previously discussed, Ron Leroux made a number of allegations against various members of the clergy and prominent community members, who he claimed belonged to a group or “clan” of pedophiles. Mr. Leroux claimed to have been a victim of abuse by some of these clergy members and to have witnessed some of them abuse others. The claims of abuse were made by Mr. Leroux against Bishop Eugène LaRocque, Monsignor Donald McDougald, Father Bernard Cameron, Father Gary Ostler, and Father Kevin Maloney.

In addition, the Fantino Brief contained a statement from C-15, who alleged that he had been abused by Father Maloney.

Statements by Ron Leroux

In 1996 and 1997 Mr. Leroux provided a number of statements to Constable Perry Dunlop and his lawyer, Charles Bourgeois. He also provided an affidavit in support of Constable Dunlop’s lawsuit against the Cornwall Police Service (CPS), the Diocese, and others. An affidavit dated November 13, 1996, and a statement dated December 4, 1996, were included in the Fantino Brief.

Mr. Leroux was interviewed by OPP officers in Orillia on February 7, 1997, in the presence of Mr. Bourgeois. He was also interviewed by Detective Sergeant Pat Hall and Detective Constable Don Genier on November 25, 1997.

There are some significant discrepancies between these numerous statements, which may have affected the OPP’s assessment of Mr. Leroux’s credibility. Some of these differences will be discussed below. Further, Detective Inspector Hall testified that when he met with Mr. Leroux, he was able to assess his demeanour and did not find him to be credible.

I would also note that Mr. Leroux was questioned by the OPP in 1993 after Ken Seguin’s death, but he did not disclose his allegations of sexual abuse to them at that time.

The OPP prepared individual Crown briefs for allegations made against Bishop LaRocque, Monsignor McDougald, Father Cameron, Father Ostler, and Father Maloney. As Mr. Leroux claimed that some of these clergymen attended the same events where abuse allegedly occurred, I will describe the investigations by event, rather than by individual.

Abuse at St. Columban's Boys' School

Mr. Leroux alleged that he had been abused during confession while he was a student at St. Columban's Boys' School. The details surrounding this abuse varied from statement to statement. What is consistent is the claim that he was asked inappropriate questions of a sexual nature and then he was touched. At first he only named Father "McDougal" or "McDougald" as the alleged perpetrator, but in later statements he claimed to have experienced similar abuse at the hands of Father Cameron. Mr. Leroux was considerably confused about his age when the incidents occurred; the earliest age he gave was nine and the latest was fourteen, thus dating the alleged abuse between 1956 and 1961.

I note that victims of child sexual abuse often have difficulty establishing the exact dates of their abuse, and these discrepancies alone should not undermine a complaint's credibility. In this case, Detective Sergeant Hall and Detective Constable Genier attempted to help Mr. Leroux find markers, such as what grade he was in at the time of the alleged abuse, in order to establish the dates.

The Children's Aid Society (CAS) provided the OPP with two letters in August 1997 that contained the priests' response to these allegations.

A letter written in response to a demand for particulars in Constable Dunlop's lawsuit admitted that Monsignor McDougald heard confessions at the St. Columban's Boys' School during the relevant period, but denied the allegations. The letter noted there were no confessional stalls, so everyone in the room could see everyone else.

The second letter, written to CAS Executive Director Richard Abell, stated that Father Cameron was not ordained until 1958 and that he denied that he could have done the things alleged by Mr. Leroux in the late 1950s. This said, it is important to note that some of Mr. Leroux's statements put the date of the abuse after 1958.

Both Monsignor McDougald and Father Cameron were interviewed by the OPP, but neither were asked about hearing confessions at St. Columban's Boys' School.

While it may be that the officers did not put much weight on Mr. Leroux's statements given the important discrepancies within them, it would have been wise to do a complete interview of the suspects. They should have probed Monsignor McDougald about the confessions he heard at St. Columban's Boys' School and ascertained whether Father Cameron ever heard confession at the school during the relevant period.

Abuse at Cameron's Point

Mr. Leroux claimed that in 1959 or 1960, when he was twelve or thirteen years old, he attended a "religious retreat" at Cameron's Point. Mr. Leroux claimed that at this event he saw numerous boys being abused by priests and that some of

the boys had sheets over their heads and candles in their rectums. He also claimed that at this event, he was abused by Bishop LaRocque, who was a priest at that time. In his statements to Constable Dunlop and Mr. Bourgeois, Mr. Leroux also said that he saw Father Cameron and a Father “McDougall” or “McDougald” molest altar boys at this retreat. Mr. Leroux later told Detective Sergeant Hall and Detective Constable Genier that either Father Cameron or Father McDougald also touched him at this retreat. Mr. Leroux said that Father Cameron threatened him not to tell anyone.

In his November 13, 1996, affidavit, Mr. Leroux claimed that this ritual at Cameron’s Point occurred on a weekly basis. This detail is not mentioned in later statements.

Mr. Leroux claimed that he had attended the retreat with another boy, who was also allegedly abused. Unfortunately, by the time of the OPP’s investigation, this individual was dead. Mr. Leroux also gave the names of a number of people who could confirm his story about Cameron’s Point. Although some attempts were made to interview some of these people, they were not all interviewed. In Project Truth’s Case Manager Assignment Register, there is a note beside some names stating that because the individual who accompanied Mr. Leroux to Cameron’s Point was deceased, the “information [was] no longer required.”

The OPP interviewed a number of former altar boys about the allegations made by Mr. Leroux. Detective Inspector Hall testified that no one came forward to say that this incident at Cameron’s Point had occurred.

Bishop LaRocque, Monsignor McDougald, and Father Cameron were all interviewed by the OPP and were asked whether they had been to Cameron’s Point.

Upon review of these statements, I found these interviews to be superficial. The officers appear to have been simply going through the motions. They asked what appeared to be a pre-set list of questions, and failed to follow up on inconsistencies or on information learned. For example, Monsignor McDougald said that Bishop LaRocque had hosted an event for altar boys at Bishop Brodeur’s summer home at Bishop’s Point. The interviewer did not ask any follow-up questions about this event.

The fact that the investigating officers questioned Mr. Leroux’s credibility may have been a factor in these poorly conducted interviews.

As previously noted, Mr. Leroux testified at the hearings that he did not actually witness a ritual at the Cameron’s Point retreat involving sheets and candles.

Abuse at Malcolm MacDonald’s Cottage

Mr. Leroux also claimed that Bishop LaRocque and Father Ostler would visit Malcolm MacDonald’s cottage and that Mr. MacDonald brought male prostitutes and young boys there. Mr. Leroux alleged that he saw Bishop LaRocque and

a “youngster” go into a bedroom and close the door. Mr. Leroux suggested that the young person appeared to have been “conditioned” for abuse.

The OPP interviewed the owner of a cottage near Mr. MacDonald and the owner of the marina in Summerstown, near Mr. MacDonald’s cottage. They also interviewed Mr. MacDonald, who denied that the Bishop had ever been to his cottage and denied that he had attended social events with Father Ostler.

Both Bishop LaRocque and Father Ostler stated they had never been to Mr. MacDonald’s cottage.

I find that the officers took reasonable steps to ascertain whether abuse had occurred at the cottage.

Abuse at the St. Andrew’s Parish House

Mr. Leroux also claimed that Bishop LaRocque and Father Maloney had attended dinner parties at the St. Andrew’s Parish house. He said that after the meal, the group would disappear to separate rooms, including the bedrooms. The officers interviewed most, if not all, of the people who allegedly attended these parties.

Further, Mr. Leroux alleged that when he was painting the parish house, Father Ostler grabbed him in the genitals and asked, “[W]hat’s your game?” Mr. Leroux said that this incident occurred between 1987 and 1989. Mr. Leroux would thus have been over forty years old at the time. Detective Sergeant Hall and Detective Constable Genier asked Mr. Leroux about this incident in November 1997, and he said he didn’t consider it to be an assault, “it was, was like a joke really.” During his interview, Father Ostler was not asked about this incident, but he denied knowing Mr. Leroux.

Mr. Leroux also claimed that when he was painting the parish house in 1989 or 1990, he saw Father Maloney abuse an unidentified boy aged twelve to fourteen.

Credibility of Ron Leroux

Detective Inspector Hall testified that he did not find Mr. Leroux to be credible and that the other officers shared this opinion. This affected his subjective belief in the allegations, and Detective Inspector Hall testified that he was not able to form reasonable and probable grounds to lay charges.

Allegations by C-15

The Fantino Brief contained a second allegation of abuse against Father Maloney. C-15 alleged that between 1975 and 1979, he was abused by Father Maloney while he was a student at the “Alfred Boy’s School,” formally known as St.

Joseph's Training School for Boys. C-15 said that Father Maloney was not a regular priest there but filled in when other priests were sick.

In a response to a demand for particulars, most likely in relation to Constable Dunlop's lawsuit, Father Maloney denied that he had ever been to the Alfred training school or that he had any connection with that school. The OPP were given this document by Bill Carriere from the CAS.

Detective Constable Steve Seguin was the lead investigator on this complaint. He testified that during this investigation, he learned that the Archdiocese of Ottawa was responsible for assigning priests to the Alfred training school. He spoke with Monsignor Roger Morin of the Diocese of Ottawa as well as Father Gilles Tanguay from St. Victor Parish in Alfred to find out if Father Maloney had ever been assigned to St. Joseph's Training School. Detective Constable Seguin reviewed a variety of records, such as cheque stubs, bills, phone bills, and registers that recorded baptismal and marriage ceremonies. He testified that he did not find any cheques payable to Father Maloney, nor did he find any mention of him in the school's bills.

Detective Constable Seguin also interviewed individuals who had been at St. Joseph's Training School and none of them said that Father Maloney had been there.

Father Maloney was interviewed by Detective Constables Seguin and Genier, but he was not asked if he knew C-15 or if he had ever been to the St. Joseph's Training School. The officers should have put these questions to him during their interview.

After the Crown brief was submitted, Lorne McConnery wrote to Detective Inspector Hall and requested that he obtain the actual records from the school that would indicate whether Father Maloney had been there or not. Mr. McConnery advised that these records were in the possession of the Criminal Injuries Compensation Board. Mr. McConnery testified that he was eventually provided with these records. It is unclear to me what documents Mr. McConnery was looking for in addition to the records that Detective Constable Seguin had obtained from the Ottawa Diocese earlier in the investigation.

Detective Constable Seguin testified that he found no corroborating evidence for C-15's complaint. Thus, he was not able to form reasonable and probable grounds to lay charges against Father Maloney.

Submission of the Crown Briefs

Crown briefs were submitted to Shelley Hallett on September 22, 1999, for the complaints against Bishop LaRocque, Monsignor McDougald, Father Cameron, and Father Ostler. The brief in the Father Maloney matter was submitted to

regional Crown James Stewart on November 15, 1999, although Shelley Hallett may not have received the brief until January 2000.

A Crown opinion was not rendered until August 15, 2001. The reasons for this substantial delay and the OPP's response to it are discussed further in the section entitled "Conspiracy Investigation" and in Chapter 11, on the institutional response of the Ministry of the Attorney General.

Investigation of Brian Dufour

On September 17, 1997, C-97 provided Detective Constables Steve Seguin and Joe Dupuis with a statement alleging that he had been abused by Brian Dufour, as well as by a number of other individuals. As discussed earlier in the section "Project Truth's Mandate," the allegations against these other individuals were referred to the Cornwall Police Service (CPS), albeit several years later. C-97 told the OPP that Mr. Dufour was a childcare worker at the Cornwall Youth Residence (known today as Laurencrest) and that Mr. Dufour had sexually abused him on a number of occasions when he was a resident. He also claimed that Mr. Dufour had sexually abused him when he was out on a day pass from a prison drug treatment facility. C-97 told the officers that he believed that Mr. Dufour was in Brampton, running a private home for boys.

Detective Constable Seguin was the lead investigator on this matter. In the fall of 1997, he contacted Bryan Harris, a social worker with the Ontario Correctional Institute, who corroborated C-97's story of being abused while on a day pass from a correctional facility.

Detective Constable Seguin testified that he informed Bill Carriere from the local Children's Aid Society (CAS) about the allegations against Mr. Dufour. On November 20, 1997, Mr. Carriere told Detective Constable Seguin that he had in turn notified the Brampton CAS.

In December 1997, Detective Constable Seguin contacted the Ministry of Community and Social Services and learned that Mr. Dufour was not operating a group home in the Peel Region. He also reported Mr. Dufour to the Peel Regional Police. However, Detective Constable Seguin testified that he did not know Mr. Dufour's current location at that time. He could not recall the specific steps he took to locate Mr. Dufour but testified that when he became aware of a suspect it was his practice to search the Canadian Police Information Centre (CPIC) and Ontario Municipal and Provincial Police Automation Cooperative, and to obtain driver's licence information from the Ministry of Transportation.

C-97 contacted Detective Constable Seguin on August 19, 1998, to ask how the investigation was proceeding. There is no indication in Detective Constable Seguin's notes or his will-state on the Brian Dufour case of contact with C-97

between October 1997 and August 1998. When Detective Constable Seguin told him that they could not find Mr. Dufour, C-97 gave him the name of someone he believed was Mr. Dufour's brother-in-law and who C-97 thought might be able to assist in locating the suspect.

It appears that Detective Constable Seguin did not follow up on this lead until eleven months later on August 4, 1999. He then spoke to the man referred to him by C-97, who said that Mr. Dufour lived in the Hamilton area. Detective Constable Seguin contacted the Hamilton police two days later to request any information they had on Mr. Dufour.

In November 1999, the Hamilton police informed the Ontario Provincial Police (OPP) that Mr. Dufour had been arrested and charged for sexually assaulting an undercover police officer in Hamilton area in 1988. There was no record of this in CPIC. A Ministry of Transportation search conducted on November 9, 1999, provided an address for Mr. Dufour in Hamilton. It is not clear whether Detective Constable Seguin or the Hamilton police conducted the search. The fact that they were able to obtain an address for Mr. Dufour when the search was conducted in 1999 suggests that Detective Constable Seguin probably did not conduct the search as he should have, early in the investigation.

During the fall of 1999, Detective Constable Seguin also interviewed a number of former residents of the Cornwall Youth Residence.

A Crown brief was submitted on December 17, 1999. The OPP received a recommendation from the Crown to proceed with charges on April 3, 2000, and Mr. Dufour was arrested on April 6, 2000. He died a few days later, on April 11, and the charges against him were withdrawn.

The total delay between the time C-97's statement was taken to the laying of charges by Project Truth was almost thirty-one months. The investigation itself lasted twenty-seven months, and it took an additional four months to obtain an opinion from the Crown. Detective Constable Seguin does not appear to have taken any investigative steps between December 1997 and August 1998 or between October 1998 and August 1999.

At the hearing, Detective Constable Seguin could not recall the reason for these gaps in the investigation. Having reviewed the evidence, I can see no justification for delays of this length and find that Detective Constable Seguin unreasonably delayed the investigation into allegations of sexual abuse by Mr. Dufour.

Further, Detective Constable Seguin's supervising officers, Detective Inspectors Tim Smith and Pat Hall, should have noted the delays in this investigation and ensured that the complaint was being investigated in a timely manner. A request to the Criminal Investigation Branch of the OPP for additional resources might have mitigated this and other delays.

Investigation of Keith Jodoin

In a statement to Detective Constables Joe Dupuis and Steve Seguin on March 22, 1999, Marc Carriere alleged that he had been sexually abused by Keith Jodoin. In 1985, Mr. Carriere was an intern at the Ontario Provincial Court offices in Cornwall and Mr. Jodoin was a Justice of the Peace. Mr. Carriere, who was then twenty-one years old, alleged that Mr. Jodoin touched him sexually while they were in a car on the way to Mr. Jodoin's cottage.

Detective Constable Dupuis took two statements from potential witnesses in May 1999. On May 19, 2000, Detective Constables Dupuis and Don Genier took a cautioned statement from Mr. Jodoin. These are the only statements listed in the Crown brief submitted by the Ontario Provincial Police (OPP) on May 29, 2000. It is unclear to me why this investigation took over a year to complete.

On July 4, 2000, the Crown advised that there was sufficient evidence to proceed with charges. Detective Constable Dupuis and Crown Attorney Claudette Wilhelm met with Mr. Carriere on July 31, 2000. The next day, Mr. Carriere signed a document requesting the OPP not proceed with charges against Mr. Jodoin, because he did not wish to attend court and give evidence in the matter.

Mr. Carriere changed his mind and returned to the OPP on August 8, 2000. He provided a statement to Detective Constables Dupuis and Genier on August 9, 2000, confirming that he wanted to proceed with the charges. He testified that it was Richard Nadeau who encouraged him to return to the OPP.

Mr. Nadeau was an alleged victim of sexual abuse and was involved with a controversial website about allegations of sexual abuse in the Cornwall area and about Project Truth. He was also a plaintiff in a class action lawsuit for victims of abuse. As discussed further in "External Pressures: The Media, Websites, and Garry Guzzo," Mr. Nadeau's contact with alleged victims, such as C-8, was a concern for Project Truth.

Detective Constable Dupuis interviewed Mr. Nadeau on August 8, 2000. Mr. Nadeau said Mr. Carriere had initially told him about the incident with Mr. Jodoin in early 2000. Mr. Nadeau spoke to Mr. Carriere again after learning that he did not want to proceed with the charges. According to Mr. Nadeau, they discussed Mr. Carriere's concerns about going forward, including the facts that he felt intimidated by pursuing the charges as a sole complainant, he was worried about the effect the case would have on his relationship with his partner, and he believed there was little chance for success at trial. Mr. Nadeau told Detective Constable Dupuis that he advised Mr. Carriere to think about it over the weekend and to do what was right for him and his partner, but also "what was right ... for society."

Mr. Jodoin was arrested on August 24, 2000, and charged with one count of sexual assault on a male. The Crown withdrew this charge on November 20,

2000. According to Detective Inspector Pat Hall's notes, Mr. Nadeau's involvement was a factor in that decision.

Investigation of Father Romeo Major

Project Truth Receives Complaint Against Father Major

On October 13, 1999, Detective Constable Don Genier received a call from C-111, who alleged that she had been sexually abused by Father Romeo Major in 1978, when she was an altar girl at the Paroisse des Saints Martyrs Canadiens. Detective Constables Genier and Steve Seguin took a formal statement from C-111 on October 19, 1999.

The Ontario Provincial Police (OPP) conducted a number of interviews of potential witnesses.

A Crown brief was submitted on February 18, 2000, and on March 12, 2000, Crown Attorney Claudette Wilhelm recommended that the OPP proceed with charges. Detective Constable Dupuis attempted to take a statement from Father Major on March 16, 2000. Father Major told Detective Constable Dupuis he was told not to say anything and requested to call his lawyer. His lawyer advised him not to provide a statement.

On April 10, 2000, Father Major was charged with one count of indecent assault on a female.

C-69 Alleges Abuse by Father Romeo Major

Shortly after the arrest of Father Major, C-69 contacted Detective Inspector Pat Hall and inquired about the procedure for someone who has a complaint. She wanted to know if it would automatically go forward. She advised Detective Inspector Hall that a member of the clergy was involved but did not provide a name. Arrangements were made for C-69 to meet with Detective Constable Joe Dupuis or Detective Constable Genier.

As I have previously mentioned, it is important to note that Project Truth did not have any female police officers. In this case, the two alleged victims were female. Although I have seen no evidence to indicate that the gender of the officers was a problem in this case, it is nonetheless important that complainants be given a choice about the gender of the officers when they are going to disclose allegations of sexual abuse. There should have been a female officer involved in the project, even if only on an "as-needed" basis.

Detective Constables Dupuis and Genier interviewed C-69 on April 18, 2000. She refused to provide a formal statement. According to Detective Constable Dupuis, C-69 was "very fragile," and it was difficult for her to disclose her

allegations to the officers. She said Father Major abused her when she was between fourteen and sixteen years old.

She also alleged that she was abused by a priest in Quebec. She said that she received \$5,000 for treatment from a diocese in Quebec and that her “good friend” Jacques Leduc had helped her get that settlement. According to C-69, Mr. Leduc, who was acting for the Diocese of Alexandria-Cornwall at the time, advised her she could not proceed criminally due to a two-year limitation period for these charges in Quebec. I would point out that this is not the law in Quebec. C-69 said had to sign a document agreeing to never talk about the abuse by this Quebec priest again.

At the hearings, Mr. Leduc confirmed that he had represented C-69 and that he helped her obtain a civil settlement from a Quebec diocese for a complaint of sexual abuse against a priest. He denied having told her that there was a limitation period for her criminal complaint.

C-69 also told the officers that Bishop Eugène LaRocque told her that if she talked about the abuse, he would ensure she was fired from her teaching position with the Catholic school board. At the hearings, the Bishop was asked about this comment, to which he said, “That is entirely false.” C-69 also said that she had disclosed to Mr. Leduc everything that had happened to her. Detective Constable Dupuis testified that he did not speak to Bishop LaRocque or Mr. Leduc about these issues. He thought that perhaps Detective Constable Genier may have looked into this in greater detail.

In my opinion, the OPP should have made some enquiries of Mr. Leduc and Bishop LaRocque about this information. Especially in light of the settlement with David Silmser in 1993, the police should have been alert to the potential attempt to obstruct justice in this scenario. In addition, if, as C-69 alleged, she had told Mr. Leduc about her abuse by Father Major, Mr. Leduc may have been able to provide the police with additional information or a corroborating statement, if C-69 waived her right to solicitor-client privilege over the matter.

In addition, C-69 also told the officers that she knew of two other people who had been allegedly abused by Father Major. She did not provide names because she wanted to speak to them first. She said that one of them was mentally handicapped and that C-69 actually observed the assault on this person. C-69 said she wanted to discuss the issues with her therapist and would get back to the officers.

Detective Constable Dupuis briefed Detective Inspector Hall about the interview with C-69.

On April 26, 2000, C-69 called Detective Constable Dupuis and asked if anyone else had come forward. C-69 said she had talked to the other two victims and one wanted time to discuss the matter with her husband because she had

never told him about the abuse. Again, C-69 was going to talk to her therapist and get back to the officers about whether she wanted to go forward with her allegations.

Detective Constable Dupuis contacted C-69 two days later, but she had not yet made up her mind about coming forward with her allegations against Father Major.

Detective Constable Dupuis made a number of unsuccessful attempts to contact C-69 between April and June 2000. Project Truth officers spoke with C-69 again on September 13, 2000. She was upset that the officers had taken notes during their first meeting.

C-69 Not Medically Fit to Proceed

On September 28, 2000, Detective Inspector Hall received a call from a doctor treating C-69, who advised that she was not medically fit to participate in any legal proceedings about her alleged abuse and that she requested that she not be contacted again. The doctor declined to provide a letter to this effect. He was advised of the new court date for Father Major but said he would not tell C-69 because it could affect her fragile condition.

Prosecution and Withdrawal of Charges

The case against Father Major continued to proceed on the basis of the allegations of C-111. Detective Constable Genier and Crown Wilhelm met with C-111 on November 14, 2000. They discussed C-111's medical condition and the Crown explained the court process to her. Sometime before her statement to the OPP in the fall of 1999, C-111 had been diagnosed with cancer and she had developed a brain tumour, some of which had been surgically removed. By the time of this meeting, however, she had been further diagnosed with breast, liver and kidney cancer. Although C-111 wanted to continue with the court process, Detective Constable Genier's notes of the meeting indicate that she was having difficulties remembering details of her childhood because of medication she was taking. She was becoming frustrated and discouraged with her inability to remember things.

The preliminary inquiry was held on September 19 and 20, 2001. It became apparent that C-111's memory had been affected by her illness and treatment, and the Crown made the decision to withdraw the charges. The decision was explained as follows:

Prior to the preliminary hearing, the complainant was interviewed by Crown Counsel and was both willing and able to give evidence. However, while testifying at the preliminary hearing held in Cornwall

on September 19-20, 2001, it became apparent that the memory of the complainant was negatively impacted upon by her illness and subsequent treatment. As a result the Crown determined that the quality of her memory is such as to lead to the conclusion that there is no longer a reasonable prospect of conviction.

The charges were withdrawn on October 10, 2001.

David Petepiece's Complaint

David Petepiece called Project Truth on July 15, 1998, and Detective Constable Steve Seguin met with him that day. On the following day they met again, and Mr. Petepiece provided him with a typewritten statement of his allegation.

Mr. Petepiece reported that in 1956, when he was ten years old, he was hospitalized at Cornwall General Hospital for a period of about ten days. During this time, he was visited several times by a clergyman from Trinity Anglican Church. According to Mr. Petepiece, the man:

... began to tell me about a job that he had been assigned by the church. And he wanted my help in this project ... All I had to do was to let him put his hands under the blankets and what he wanted to do, and what his project was, was to determine sort of a size change in a male penis from sort of a flaccid to the erect state. And he wanted to do that and I wouldn't allow him to do that.

Mr. Petepiece did not tell anyone about the incident at that time.

Mr. Petepiece told Detective Constable Seguin that in the 1980s he contacted a record keeper at the Anglican Church, who gave him the name of an individual who may have been the perpetrator, but very little other information. Mr. Petepiece also gave Detective Constable Seguin the name of the boy who shared the hospital room with him.

Detective Constable Seguin told Mr. Petepiece that he would look into the allegations and get back to him in two or three weeks. Just over a week after his meeting with Mr. Petepiece, Detective Constable Seguin interviewed Tommy Basil, with whom Mr. Petepiece claimed to have shared the hospital room. Mr. Basil said that he did not know Mr. Petepiece and that he had been at a different hospital and therefore could not corroborate Mr. Petepiece's allegations.

Despite taking this prompt action to investigate the complaint, Detective Constable Seguin did not contact Mr. Petepiece within a few weeks as promised, or, it appears, at all.

Mr. Petepiece contacted Detective Constable Seguin on January 18, 1999, to inquire about the status of the complaint. Detective Constable Seguin told him about the interview with Mr. Bazil and said that the matter remained open. According to Mr. Petepiece, Detective Constable Seguin “made no mention of trying to identify the priest.” Detective Constable Seguin testified that he could not recall if attempts had been made to identify the alleged perpetrator.

In May 2001, Mr. Petepiece wrote a letter to the Ontario Civilian Commission on Police Services, stating that he did not feel that his complaint had been fully investigated and asking that the investigation be “reinvigorated.”

He drafted a similar letter to the OPP Professional Standards Bureau on July 12, 2001, but before sending it, Mr. Petepiece “decided to give Constable Seguin one last chance.” He contacted Detective Constable Seguin, told him that he was about to make a formal complaint, and asked if he would like to meet.

They met on July 16, 2001. Detective Constable Joe Dupuis also attended this meeting. Mr. Petepiece mistakenly thought he was Detective Inspector Pat Hall. Mr. Petepiece testified that this officer:

... made it a point to sit where he could sort of stare at me. He wrote down every word I said. It was almost like he was taking dictation. I could almost feel his presence, sort of in trying to intimidate me.

The officers explained to Mr. Petepiece why the investigation of his complaint was not pursued further. Detective Inspector Hall outlined the reasons in a letter sent to Mr. Petepiece a few days after the meeting.

On reviewing this file, I instructed that no further investigation be done for the following reasons:

1. *No criminal offence had been committed.* In order for an offence to take place under the Criminal Code of Canada in 1956, physical contact would have had to take place. In 1985, the Criminal Code was amended to include the offences of Sexual Interference, Section 151; Invitation to Sexual Touching, Section 152; Sexual Exploitation, Section 153 of the Criminal Code of Canada. I have attached copies for your information.
2. The mandate of Project Truth was to investigate historic allegations of a sexual nature involving the *Catholic Clergy* and other prominent persons in the Cornwall area. This did not include every sexual assault allegation in the City of Cornwall that was reported, and *did not include allegations against members of other religions.*

3. Any allegations of a criminal nature occurring in the City of Cornwall were passed on, by memorandum, to Staff Sergeant Rick CARTER, Cornwall Police Service, for their investigation. Due to the wide publicity generated by Project Truth, our office received many calls from individuals, such as yourself, who had allegations, but possibly unsure as to who should investigate. We looked into all allegations that were received by Project Truth.

In your particular case, there was no criminal offence committed. I regret you were not completely made aware of our actions, or lack of continuation on the investigation. This may have been due to miscommunication between Detective Constable SEGUIN and myself.

If you wish to pursue this matter, *I request you contact the Cornwall Police Service* for that purpose, as the incident took place within their jurisdiction. (Emphasis added)

In a report to the Criminal Investigation Branch, Detective Inspector Hall stated that the allegations made by Mr. Petepiece were “[t]urned over to Cornwall Police Service” (CPS). However, Detective Inspector Hall did not write a letter to the CPS to request an investigation into Mr. Petepiece’s allegations, unlike the outstanding allegations brought forward by C-97, or the complaint reported by Marc Latour (see “Project Truth’s Mandate” section above). He simply told Mr. Petepiece to contact the CPS himself if he wanted further action to be taken.

In preparation for this Inquiry, Mr. Petepiece met with Archdeacon Ross Moulton of the Trinity Anglican Church on August 19, 2006, to inform him that he would be testifying. Mr. Petepiece showed him the statement that he had given to the Ontario Provincial Police (OPP). He testified that the Archdeacon:

... was quite compassionate in his reaction to it; expressed a great deal of regret for what had gone on; was offering to do whatever he could to assist me. He indicated that he did have an obligation through church policies to report my story to some committee, which I agreed that he could do.

In an e-mail to Mr. Petepiece, the Archdeacon stated, “I regret deeply the hurt you were subjected to those years ago,” and offered further support. In

addition, Mr. Petepiece testified that the Archdeacon did some research to identify the alleged perpetrator and determined that the individual died in 1960.

Mr. Petepiece testified that this gave him a sense of “closure” and that it “had dealt with my most troubling concern, which was that other people were possibly still being victimized.”

Although the Anglican Diocese is not an institution that is being examined by this Inquiry, I mention this interaction because it provides insight into an appropriate institutional response. Mr. Petepiece testified that he felt that this was a model response:

First of all, there was no attempt to dismiss, defend or excuse the conduct that I was alleging had occurred. It was accepted at face value. I was made to feel as if the church through this individual was truly sorry for what I had experienced as a child. And I think his follow up which, as I said before was unrequested, which I think much more positively identified the perpetrator and established that he was dead, gave me the closure that nobody else has been able to do.

In contrast, the OPP displayed a disappointing lack of sensitivity in its dealings with Mr. Petepiece. The decision not to pursue Mr. Petepiece’s complaint may have been reasonable; however, Detective Constable Seguin’s failure to inform him of this decision was not. If it was determined that the complaint was properly in the jurisdiction of the CPS, a referral should have been made immediately by Project Truth rather than pointing Mr. Petepiece in this direction three years after his initial complaint.

In my view, this case demonstrates one instance of the OPP and Project Truth management’s failure to develop and enforce policies, practices, and procedures that would have ensured complainants making allegations of sexual abuse were dealt with appropriately, offered support, and kept apprised of the status of the investigations into their complaints.

Investigation of John Christopher Wilson

On October 10, 1997, Detective Constable Joe Dupuis received a call from probation officer Jos van Diepen, who said that Keith Ouellette reported being sexually assaulted by Ken Seguin, Richard Hickerson, and John Christopher (Chris) Wilson. Detective Constables Steve Seguin and Dupuis met Mr. Ouellette at the Cornwall jail two weeks later, and he disclosed that he had been sexually abused by his brother, Richard Ouellette, his probation officer, Mr. Seguin, Mr. Hickerson from Canada Manpower, and a former teacher at St. Lawrence College, Mr. Wilson. I

comment on the investigation of Mr. Hickerson in another section in this chapter. Mr. Seguin was deceased when Keith Ouellette reported the allegations.

According to Detective Constable Seguin's notes, Mr. Ouellette was emotional and asked if he could wait to give a recorded statement until he was released from jail. On October 30, 1997, Detective Constables Seguin and Dupuis conducted an audiotaped interview of Keith Ouellette regarding allegations of sexual abuse by Richard Ouellette, Mr. Seguin, Mr. Hickerson, and Mr. Wilson.

Mr. Ouellette recounted that Mr. Wilson was the Theatre Manager of Aultsville Hall in the 1970s and was a teacher at St. Lawrence College, where Mr. Ouellette studied. Mr. Ouellette alleged that during a Halloween party at Aultsville Hall he was drugged and woke up in Mr. Wilson's bedroom. He alleged that Mr. Wilson sexually abused him while he was intoxicated and that this was not consensual.

At some point following the night of the Halloween party, Mr. Wilson offered to have Mr. Ouellette stay at his residence. Mr. Ouellette recalled that he would go to Mr. Wilson's on the weekends and that this developed into a sexual relationship. Mr. Ouellette testified that after having been previously abused by other men in the Cornwall area, he started to question his sexuality. As a result, he believes that there may have been some consensual sex with Mr. Wilson.

On May 25, 2000, Detective Constables Dupuis and Don Genier took a second statement from Mr. Ouellette specifically regarding his allegations against Mr. Wilson. During the second interview, Mr. Ouellette had difficulty recalling the chronology of the abuse but alleged that he was sexually abused four or five times over a two-year period. He also clarified that the incidents took place sometime in 1976–1977 and that he was about twenty-four years old at the time.

Mr. Ouellette testified that he spoke regularly with Detective Constable Dupuis throughout the investigation:

I was very aggravated over the fact that my other two perpetrators were dead and that I couldn't do anything about it. It aggravated me and I thought to myself that something has to be done about John Christopher Wilson and my brother but I hesitated with my brother, but I wanted to continue on with John Christopher Wilson.

On June 2, 2000, Mr. Wilson gave a cautioned statement to Detective Constables Dupuis and Genier. Mr. Wilson confirmed that he was Mr. Ouellette's teacher at St. Lawrence College in 1978, but he denied that Mr. Ouellette ever lived with him or that they ever had a sexual relationship. However, Mr. Wilson disclosed that he was fired from the college because of allegations of sexual indiscretions with a student. He also acknowledged that he held parties at his residence in the late '70s and early '80s, and that Mr. Ouellette probably attended along with other

students. When pressed by the officers, Mr. Wilson conceded a certain attraction to Mr. Ouellette and stated that there may have been some flirting.

As discussed in Chapter 11, “Institutional Response of the Ministry of the Attorney General,” Alain Godin was provided with the Crown brief on June 27, 2000. He was asked to review the file and provide an opinion as to whether charges should be laid against Mr. Wilson. On June 29, Alain Godin determined that there was no reasonable prospect of conviction because of inconsistencies in Mr. Ouellette’s statements and problems with the issue of consent.

External Pressures: The Media, Websites, and Garry Guzzo

The media coverage of the Project Truth investigations was, by and large, negative. The Ontario Provincial Police (OPP) was frequently portrayed as, at best, ineffective and incompetent in its investigations and, at worst, compliant in a cover-up of historical sexual assault in the Cornwall community. Several key narratives, including the existence of a pedophile ring, were repeated in the media throughout the Project Truth investigations and became problematic for the investigation and for the OPP.

In Chapter 4, “Media Coverage of Allegations of Historical Abuse of Young persons in the Cornwall Area,” I set out the findings of a study that concluded media coverage in Cornwall did not meet the expected journalistic standards, lacked in-depth investigation and analysis, and contained too much speculation and too little fact. In this section, I will examine the OPP’s response to those media reports, along with its response to websites about Project Truth and to individuals, such as Garry Guzzo, MPP for Ottawa West–Nepean from 1995 to 2003, who were providing information (and misinformation) to the media.

Media at the Outset of Project Truth—Framing the Issues

As discussed in the section “Initial Media Announcements of Project Truth,” the first stories about Project Truth appeared in the summer of 1997. The OPP announced the launch of the project in a press release on July 28, 1997, and held a press conference on September 25, 1997. The media coverage that followed created difficulties for the OPP because it suggested that (1) Project Truth was focused on investigating a ring of pedophiles; (2) sexual abuse was endemic in the Cornwall area; and (3) the investigations conducted by Project Truth were simply a continuation of earlier investigations by the Cornwall Police Service (CPS) in 1993 and by the Ottawa Police Service and the OPP in 1994.

From the outset of Project Truth, the media reported that the OPP was investigating a pedophile ring, even though there was no mention of a “ring” in

the initial documentation provided to the media by the OPP. The July 1997 press release simply stated that “the Ontario Provincial Police is investigating allegations of sexual abuse in the Cornwall, Ont. area.” The materials released at the OPP’s press conference said, “At present, 18 persons have had allegations of sexual abuse made against them by a number of complainants.” The headlines, however, reported:

- “OPP probe sex ring allegation: Investigation to focus on purported pedophile group in Cornwall”;
- “18 Eyed in Sex Ring”; and
- “Police widen sex-crimes investigation: Eighteen Cornwall residents suspected in pedophile ring.”

An article in the *Brockville Recorder and Times* stated that Detective Inspector Klancy Grasman of the OPP refused to comment on the nature of the allegations, but did say the investigation was based on statements taken and information obtained by CPS Constable Perry Dunlop. The reporter then turned to the amended statement of claim in Constable Dunlop’s civil suit against the CPS, the Diocese, and others to explain the nature of the allegations, and pointed out that Constable Dunlop alleged that a group of pedophiles had been, and might still continue to be, active in Cornwall.

Similarly, shortly after the initial press release, an article in the *Ottawa Sun* reported that the OPP was also looking into allegations that the “pedophile clan” had plotted to murder Constable Dunlop and his family. Again the OPP refused to comment and the reporter turned to Constable Dunlop’s statement of claim to explain the allegation.

These two articles demonstrate that, just as the mandate for Project Truth was framed by Constable Dunlop’s materials, so too was the public’s understanding of the problem under investigation. The OPP did not take proactive steps at the outset to explain the nature of the allegations and the scope of its investigation.

The initial media coverage also gave the public the impression that there was a problem of endemic proportion. Helen Dunlop was colourfully quoted in an August 3, 1997, newspaper article: “I’ve been trying to get these dishes done for six hours and I haven’t been able to because it hasn’t stopped,” referring to constant visits and phone calls from alleged victims. Carson Chisholm told the *Ottawa Citizen* that “when this breaks, it is going to make Prescott look like a Sunday School picnic ... we’re talking big numbers here. Huge numbers.” Mr. Chisholm was probably referring to the OPP’s Project Jericho investigation in Prescott, which uncovered 275 victims and 119 alleged perpetrators.

In the August 3 newspaper article just mentioned, Cornwall MPP John Cleary noted that he had received four phone calls from victims “tied into this pedophile clan” in the past four months. Detective Constables Steve Seguin and Don Genier went to see Mr. Cleary a few days after this article was published and asked for the victims’ names. Mr. Cleary refused to give them the names as the victims had been promised confidentiality, but he agreed to have his office contact the victims and ask them to come forward to the OPP. When the OPP followed up with Mr. Cleary, he said that all of the victims he was in contact with had come forward.

In the September 1997 press conference, the OPP told the public that eighteen people were under investigation. In reality, the number of suspects was larger; eighteen suspects were identified based on the Fantino Brief, but by September 1997, the OPP had additional suspects from Claude Marleau and other alleged victims who had come forward. The media reported that there were over 350 people to be interviewed.

The articles following the September press release also framed Project Truth as a continuation of previous police investigations. Detective Superintendent Larry Edgar was quoted as saying, “This investigation has been on-going since 1992 and we want to bring closure to it.” This may have suggested to readers that all the allegations being looked at by Project Truth had been investigated since 1992. This was not the case. The earlier investigations were narrowly focused on alleged abuse by Father Charles MacDonald and the illegal settlement with David Silmsner, rather than on abuse perpetrated by a larger number of individuals.

However, this suggestion is repeated in later media stories. A 1999 story by the CBC implies that Constable Dunlop alerted the police to the existence of a pedophile ring well before Project Truth, but that no charges were laid at that time. The significance of this inaccuracy became quite apparent when Mr. Guzzo began alleging police incompetence, claiming that all of the charges laid by Project Truth were “missed” by the previous investigations.

In my view, the OPP did not respond well to the initial media framing of the Project Truth investigation. The existence of a pedophile ring was the allegation most referenced in media coverage of Project Truth. The OPP should have been alert to this characterization of the investigation and responded accordingly.

There is no technical definition of a “pedophile ring.” To the extent that term refers to a group of individuals—some of whom know each other—who are accused of sexually abusing young people, there was evidence that such an entity existed in Cornwall. On the other hand, Project Truth found no evidence of a “ring of pedophiles” as described by Ron Leroux.

The problem is that the OPP never clearly articulated what a ring was or what Project Truth's mandate was in relation to investigating the existence of such an entity. As I discuss further in the section on the OPP's conspiracy investigation, Project Truth appeared to focus on the more narrow issue of whether there was a conspiracy to obstruct justice with respect to the Silmser settlement. Subsequent blanket denials of the existence of a ring were therefore understandably upsetting and confusing to the community in light of known connections between alleged perpetrators and the fact that some perpetrators shared a common alleged victim.

Media and the July 1998 Arrests

As previously discussed, on July 9, 1998, Project Truth conducted a mass arrest of six individuals. Unfortunately, arresting the suspects together did nothing to dispel the notion that the OPP was investigating a clan or ring, and the accompanying press release prematurely signalled the end of Project Truth.

The six individuals arrested on July 9 were Brother Leonel Romeo Carriere, Roch Landry, Father Paul Lapierre, George Sandford Lawrence, Father Kenneth Martin, and Dr. Arthur Peachey. The OPP had planned to arrest Harvey Latour that day as well, but he had taken an overdose of pills. He was arrested shortly thereafter. None of these individuals came to the OPP's attention through the Fantino Brief.

On the day of the arrests, the OPP issued a press release and Superintendent Carson Fougère spoke at a news conference. He made a number of statements that may have contributed to some of the rumours circulating in the community.

Superintendent Fougère said that the men arrested were "life-long friends," that "their connections are through the Roman Catholic Church," and that some of the men had business relationships. These assertions are inaccurate—the accused did not all know each other and only some of them had a connection through the Catholic Church—but were repeated in the media in the years that followed.

The media was also told that "five of the accused shared one victim" and that another victim was abused by two of the accused. At the same time, Superintendent Fougère said, "There is no evidence this was a ring," and, "A pedophile ring? We haven't uncovered evidence of it." It is not surprising to me that some members of the press and the public would find the inconsistency of these statements confusing, and even disingenuous.

The media release issued by the OPP stated that Project Truth was continuing, but that it was projected to end in the fall of 1998. This statement probably caused concern for Helen Dunlop, who was interviewed shortly after the arrests and noted that none of the individuals arrested were mentioned in the materials

that she and Constable Dunlop had handed over to the OPP. Ms Dunlop said that there were ten other individuals who should have been charged.

The Dunlops, the Media, and Project Truth

Shortly after the July 9 arrests, Constable Dunlop met with Detective Inspector Tim Smith, Detective Sergeant Pat Hall, and Inspector Richard Trew. During this meeting they became aware that the material in the binders delivered to the Ministry of the Attorney General and the Ontario Civilian Commission on Police Services on April 7, 1997, had not been forwarded to the OPP. This meeting is discussed in the section “Interactions between Project Truth and Constable Perry Dunlop.”

This discovery may have fuelled Constable Dunlop’s concern about whether Project Truth had all the relevant information and was fully investigating the allegations uncovered by the Dunlops. At the time of the July 1998 arrests, a number of key suspects in the Fantino Brief, including Father Bernard Cameron, Bishop Eugène LaRocque, Murray MacDonald, Father Gary Ostler, Father David Ostler, and former Cornwall Chief of Police Claude Shaver had not yet been interviewed. In addition, the OPP had not yet begun its investigation of the alleged conspiracy, although this may not have been publicly known. Further, an article in the *Cornwall Standard-Freeholder* on July 10, 1998, may also have raised Constable Dunlop’s suspicions about the OPP’s investigation. The article stated that the OPP had told some people that they were not under investigation.

As noted in the section of this chapter dealing with Constable Dunlop’s interactions with Project Truth, the relationship between the OPP and the Dunlops began to break down in the fall of 1998. Constable Dunlop refused to sign a document indicating that he had given the OPP all his disclosure, and there was a tense telephone conversation between Detective Sergeant Hall and Constable Dunlop over his contact with Claude Marleau. In January 1999, Detective Inspector Hall informed the Dunlops that there would be no charges laid in the investigation into the death threats they had received, much to their displeasure.

The breakdown of this relationship was significant because of the considerable goodwill the Dunlops enjoyed in the Cornwall area and beyond. The Dunlops received attention from the national media in the winter of 1999 in stories by CBC radio and *Chatelaine* magazine on whistleblowers. These stories are just two examples of the numerous media pieces that depicted Constable Dunlop as a “folk hero” and a whistleblower. Similar media pieces had started several years earlier, such as the *Fifth Estate* episode aired on CBC television in late 1995. Dr. Mary Lynn Young noted in her study that this was a dominant theme in the media coverage surrounding the events in Cornwall (see Chapter 4). It does not appear to me that the OPP understood the impact of this framing by the media on the investigation.

One of the consequences of the public perception of the Dunlops was that some victims and their families brought their complaints directly to Constable Dunlop rather than, or as well as, to the OPP. The OPP failed to fully transfer the public trust and goodwill toward Constable Dunlop to the Project Truth investigators. Such an effort may have minimized victims' desire to reach out to the Dunlops.

In my view a joint effort with Constable Dunlop should have been made early on wherein he and the OPP could have made a public appeal asking that alleged victims report allegations to Project Truth. This could only have worked early in the investigation, when the relationship with the Dunlops was better. The Citizens for Community Renewal submitted, and I agree, that people went to the Dunlops and others because they had lost faith in the police.

Contact between the Dunlops and the complainants caused considerable difficulties in some of the Project Truth prosecutions. However, the OPP was strongly criticized when it admonished Constable Dunlop for interfering with investigations because of his status as "folk hero." The Dunlops' criticism of the OPP's investigation also significantly undermined the public's trust in Project Truth. These difficulties were multiplied when Project Truth began to receive heavy public criticism from other individuals who were held in high regard in the community, such as MPP Garry Guzzo.

Garry Guzzo's Involvement

On July 31, 1998, Helen Dunlop delivered a variety of documents, including newspaper clippings and materials relating to Constable Dunlop's charges under the *Police Services Act*, to Mr. Guzzo's office. Constable Dunlop's lawyer forwarded other materials to Mr. Guzzo on August 11, 1998.

Mr. Guzzo testified that he first became aware of concerns about the sexual abuse of young people and institutional cover-up when he was called by a prominent Cornwall lawyer, Duncan MacDonald, in late 1995. Mr. MacDonald described concerns about sexual abuse and the involvement of the Catholic Church related to the David Silmsen settlement with the Diocese of Alexandria-Cornwall and Father Charles MacDonald. He purportedly appealed to Mr. Guzzo to look into the issue, as a Catholic lawyer and a member of the government.

Mr. Guzzo testified about his interactions with a number of alleged victims, the first of whom were referred by Mr. MacDonald. Mr. Guzzo's testimony about his encounters with alleged victims was sketchy at best. He purposely did not take notes or have them leave documents with him. He testified that he typically suggested they contact the police and almost universally told them to consider retaining counsel to pursue civil actions. He testified that these alleged victims told him of abuse by Father Charles MacDonald and other priests, by Nelson Barque

and Ken Seguin while they were on probation, and by Marcel Lalonde and other schoolteachers.

Mr. Guzzo also testified about Cornwall connections he uncovered while on annual trips to Fort Lauderdale, Florida. His inability to remember important details, such as the name of a former bookkeeper for the Saltaire Motel, makes it difficult to give this testimony on this point much weight.

While I understand Mr. Guzzo's concerns about protecting the privacy interests of alleged victims whom he saw sporadically over several years, his actions vis-à-vis his notes were ill-advised. In addition, his lack of notes for his interactions with institutional officials, with a few exceptions, is unfortunate, as he was unable to be certain about many concerns he raised in the media and elsewhere after the late 1990s.

Having heard from Mr. Guzzo, I have no doubt he was genuinely concerned about the well-being of the alleged victims who sought him out. In addition, I am also of the view that his initial concerns about the complicity of institutions in covering up abuse or their or lack of action in dealing with the sexual abuse of young people were well-motivated. However, as I describe in this section, his interactions with the media, other politicians, and the OPP were at times careless or even reckless. His criticisms of the OPP Project Truth investigation were sometimes based on incomplete or inaccurate information, and had a profound impact on the investigation's effectiveness. These criticisms caused alleged victims and others to distrust the officers involved. The criticisms distracted the officers from the huge amount of work they had and it likely had an impact on their morale.

On September 18, 1998, Mr. Guzzo wrote a letter to Premier Mike Harris outlining his concerns about the OPP's investigation in Cornwall. In particular, Mr. Guzzo stated that key witnesses who had provided affidavits to Constable Dunlop had not been interviewed. One of the key witnesses, Ron Leroux, had in fact, been interviewed by the OPP on two occasions prior to September 1998. Mr. Guzzo also mentioned that the owners of the Saltaire Motel in Fort Lauderdale, Florida, had not been interviewed, which was true. He raised the issue of the missing binders that were delivered to the Ministry of the Attorney General and said that while he did not believe that there had been any wrongdoing by the government, he questioned whether anyone would believe this if the issue became public. Mr. Guzzo suggested that the OPP's conduct in the matter should be reviewed by a judicial inquiry.

In February 1999, MPP Mr. Guzzo wrote a second letter to Premier Harris. Again, Mr. Guzzo raised the OPP's failure to interview complainants and witnesses who would have knowledge of illicit activities occurring in Florida in the '60s and '70s.

On March 5, 1999, Detective Chief Superintendent Wayne Frechette contacted Mr. Guzzo at his home in Florida. Mr. Guzzo testified that he believed this phone call was a result of his letters to the Premier. According to Mr. Guzzo:

Mr. Frechette asked me in plain English what the hell I was talking about when I spoke of affidavits, documents and evidence served upon our government on April 7, 1997. He told me that no one in the Ontario Provincial Police was aware of any of this material and he, quite frankly, questioned the accuracy of my statements that same even existed. He reiterated that he was the senior person in charge of criminal investigations with the Ontario Provincial Police and that if such documentation existed, he was certain none of his officers in Cornwall, and no one at the Orillia headquarters, was even aware that this documentation existed.

Detective Chief Superintendent Frechette's purported comments were inaccurate. I have discussed the discovery of these materials by Detective Inspector Smith and Detective Sergeant Hall in July 1998 in the section dealing with Project Truth's interactions with Constable Perry Dunlop.

In March 1999, Mr. Guzzo's letters to the Premier were leaked to the press, and between March 17 and March 24 a number of stories appeared in the media in which Mr. Guzzo was highly critical of Project Truth.

One of the major issues raised in these stories was the OPP's failure to interview some of the key witnesses in the case. In particular, Mr. Guzzo alleged that one of the key witnesses who had not been interviewed was the owner of the Saltaire Motel, a motel located "on a strip of Ft. Lauderdale, Fla. notorious for underage, male prostitutes" where Cornwall officials allegedly stayed with young men under the age of consent. Mr. Guzzo claimed to have seen the registration slips listing the names of some of the alleged perpetrators. A second major issue raised in these articles was the missing binders that had been delivered to the Ministry of the Attorney General on April 8, 1997, but were never passed on to the OPP. The OPP had received a copy of these materials only on July 31, 1998. One of the articles published the receipt that Detective Sergeant Pat Hall signed for these materials, which read:

The Ontario Provincial Police "Project Truth Investigators" never received the full package that was delivered to the Office of the Attorney General, or the Office of the Solicitor General, Ontario Civilian Commission on Policing Services that was hand delivered on the 8th of April 1997 to the said offices by Constable Perry Dunlop.

This revelation probably seemed significant to the public because it provided an explanation for why the OPP had failed to interview certain witnesses. In addition, one article referred back to Ms Dunlop's comment after the July 1998 arrests that the perpetrators arrested were not the ones whom Constable Dunlop had identified, thus giving the impression that the materials that the OPP had been missing were entirely new to them. In fact, while there was some useful information in the new materials, the loss of the binders was not the reason certain witnesses had not yet been interviewed. Rather, a strategic decision had been made to delay the interviews of witnesses related to the conspiracy investigation.

Mr. Guzzo also emphasized the scope of the potential problem in the community, noting that even though twelve people had been arrested, "the probe has only scratched the surface." One of the articles pointed out that Mr. Guzzo had "seen much of the evidence firsthand" and that he had been contacted by "about a dozen" victims, thus adding credibility to his concerns about the matter. Detective Inspector Hall testified that Mr. Guzzo would have seen only the material provided by Constable Dunlop and had not received any of Project Truth's files.

Having heard Mr. Guzzo's evidence and in particular his concessions about the limited information he had when he spoke with the media on several occasions, it appears he overstated his knowledge of the facts. He also did not evaluate the reliability of much of the information he was receiving. This was indeed unfortunate because as a public figure (an MPP, a former judge, and a lawyer), Mr. Guzzo attracts media attention and is more apt to be respected and believed.

The OPP took a number of steps to respond to Mr. Guzzo's allegations. First, on March 22, 1999, Detective Sergeant Pat Hall wrote to Detective Superintendent Larry Edgar and informed him that the binders delivered to the Ministry of the Attorney General on April 8, 1997, existed, that he had received a copy of them in July 1998, and that the only additional materials not already in the OPP's possession were "two additional statements of people we were already aware of, and additional news clippings." Detective Chief Superintendent Frechette contacted Mr. Guzzo on March 31 and informed one of his staff that the OPP had found the missing materials.

Second, in order to respond to the assertion that the OPP had failed to interview the owner of the Saltaire Motel, Detective Inspectors Smith and Hall travelled to Fort Lauderdale in May 1999. That trip is described in detail in the following section, "Conspiracy Investigation." I will note here my view that the trip provides a clear example of how the Project Truth team changed their investigative strategy based on public pressure rather than setting their own priorities.

Third, Detective Superintendent Edgar requested that retired Detective Inspector Smith give an interview to a reporter from the *Toronto Sun* to respond to Mr. Guzzo's allegations. Detective Inspector Smith was upset by Mr. Guzzo's statements and felt that they were harming the investigation. At the hearing, he said, "I felt that Guzzo was grandstanding at the expense of Project Truth." Detective Sergeant Hall and Detective Superintendent Edgar were also present for the interview.

In the resulting article, the OPP attempted to correct many of Mr. Guzzo's concerns about the Project Truth investigation. Detective Sergeant Hall addressed the issue of the missing documents and explained, "This second round of documents was really just the first batch split into several files, along with Police Service Act material relevant to Dunlop's civil action, but not to our investigation ... It's true that there were three new affidavits included in that second batch of information. But we had already interviewed all three complainants by the time the material came to us." Detective Inspector Smith also addressed the accusation that a key complainant had not been interviewed, noting that the man (who was Mr. Leroux) had been interviewed twice by the OPP.

In addition, Detective Inspector Smith spoke about the pornographic tapes seized at Mr. Leroux's house, which, according to rumours, contained evidence of illegal sex acts performed by some of the alleged pedophiles. Detective Inspector Smith told the reporter that "the tapes were commercially produced pornography showing sex involving adult homosexuals."

Detective Inspector Smith also admitted that the OPP had not yet interviewed Chief Shaver, nor had it been to Florida. He explained however, that there had only been one complainant out of eighty-three who had been taken to Florida: "So we have concentrated our efforts in Canada."

I commend the proactive efforts of the OPP in this instance in attempting to correct inaccurate information circulating in the media. It is unfortunate that the information provided by Detective Inspector Smith and Detective Sergeant Hall did not quell rumours and speculation. I note, for instance, that Mr. Guzzo continued to cite the destruction of the tapes as evidence of incompetence or cover-up long after this article was published.

Unfortunately, Detective Inspector Smith made some troubling comments during the interview. For instance, he defended Murray MacDonald, saying, "Why would he protect a stranger and turn in his own father?" Detective Inspector Smith also denied the claim that there was a clan of pedophiles:

There is no evidence of a group or clan of active pedophiles operating in Cornwall today. It is true that a number of the accused are Catholic. But there is no evidence of common victims. Only five of the accused

to date know each other. But in a town like Cornwall, everybody sort of knows everybody, so people tend to think the worst.

There were a number of problems with these statements. Project Truth had not completed its conspiracy investigation, and thus Detective Inspector Smith was not in a position to comment on Murray MacDonald's involvement, or on the existence of a pedophile group.

In addition, Detective Inspector Smith's comment contained key factual errors: three victims had allegedly been abused by more than one of the accused, more than five of the accused knew one another, a number of the accused were Catholic priests, not just Catholics, and there were a number of other linkages between alleged perpetrators. These factual errors made the OPP look either disingenuous or misinformed. Either way, people in the community who knew that these statements were inaccurate would have reason to doubt Detective Inspector Smith's reassurance that there was no ring. This was not a good strategy for ensuring effective cooperation with other public institutions and the media. In his testimony Detective Inspector Smith acknowledged that the OPP did a poor job "of letting the public know exactly what was going on."

Detective Inspector Hall wrote to Mr. Guzzo on June 24, 1999, and informed him that all victims who came to the OPP's attention would be interviewed. He also noted that Mr. Guzzo appeared to have names of victims of whom Project Truth was not aware. He requested a meeting with Mr. Guzzo, but nothing was actually arranged until November 2000. This meeting will be discussed in more detail below. Detective Inspector Hall testified that he attempted to obtain these names from Mr. Guzzo before this meeting, but was not successful.

Reports on CBC Radio

The issue of whether there was a pedophile ring in Cornwall became prominent in the media again in April and May 1999. The CBC broadcast a number of stories about "how a group of powerful people sexually preyed on generations of young boys in Cornwall, Ontario."

In one of these stories, the CBC aired a quote from Detective Inspector Klancy Grasman, Deputy Director of the Criminal Investigation Branch, stating, "There is no evidence at all that there was any type of organized ring or common thread though any of this." CBC reporter Maureen Brosnahan contrasted this refusal by the OPP "to acknowledge any links between the men charged with abusing boys" with comments made in court by Crown Alain Godin during a joint preliminary inquiry into the charges against Father Lapierre, Father Martin, Mr. Lawrence, and Dr. Peachey. She noted that Mr. Godin told the judge that in some cases there was more than one person present when the abuse occurred

and that the various accuseds “groomed the boys to become victims of abuse.” She did not quote Mr. Godin as saying that there was an organized ring, but this was insinuated in the story.

Detective Inspector Hall testified that he did not have a discussion with Detective Inspector Grasman about whether it was advisable to make this comment to the media. He said, “All media stuff was done through our headquarters in Orillia.” After the story aired, Detective Inspector Hall contacted the CBC and asked them to put in a retraction because he felt that the reporter had violated a publication ban by broadcasting Mr. Godin’s comments from court proceedings. This issue is discussed further in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

In fairness, Detective Inspector Grasman did not testify, and it is not known when exactly he made the comment. However, this radio story demonstrates again why the absolute denial of a ring, or any type of common thread, by the OPP in 1998 and 1999 was troublesome. A number of facts had been reported that indicated the OPP was uncovering something more than a series of isolated incidents of sexual abuse. As one example of this, it may have seemed suspicious to the public that by 1999, three of the individuals involved in the Silmser settlement, Malcolm MacDonald, Father MacDonald, and Jacques Leduc, had been charged for allegedly abusing young people. In addition, Albert Roy and others were publicly alleging that they had been passed between Nelson Barque and Ken Seguin. Mr. Roy’s claim would have probably been seen as particularly credible given that Mr. Barque had been convicted of abusing him.

Moreover, the OPP’s denials of the existence of a ring were premature, given that it had not completed its conspiracy investigation and that it was unclear whether Project Truth was making a concerted effort to find a ring at all. This is discussed further in the “Conspiracy Investigation” section.

Shift in the Public’s Perception of Project Truth

In December 1999, an article appeared in the *Standard-Freeholder* entitled, “Do we still need Project Truth?” The writer questioned whether Project Truth was necessary, given that after fifteen months it had found no evidence of a ring, and the CPS was perfectly capable of investigating sexual assaults.

In addition, the comments being made by Mr. Guzzo and by the CBC were beginning to undermine the OPP’s credibility. The allegations, including the destroyed tapes, the missing binders, and the failure to interview certain key suspects, cast the OPP in a negative light.

Beginning in late 1999 and through 2000 the public perception of Project Truth probably worsened, as many of the suspects charged by Project Truth were not convicted. A number of suspects died: Malcolm MacDonald and Dr. Peachey

died in December 1999, Brian Dufour died just after his arrest in April 2000, and Roch Landry died in October 2000. In June 2000, Harvey Latour was found not guilty, and the charges against Brother Carriere were stayed due to his health. In addition, the charges against Keith Jodoin were withdrawn by the Crown in November 2000 because there was no reasonable prospect of conviction.

When cases are not adjudicated, like five of the seven mentioned above, convictions are not possible. Media criticism of the OPP's investigation for the lack of convictions was not fair. Perhaps more could have been done by the OPP and the Ministry of the Attorney General to educate the media and the public.

Richard Nadeau and the Project Truth Websites

Project Truth also faced a public relations challenge from a new source—the Internet. On July 26, 2000, the OPP became aware of a website called projecttruth.com. The OPP were contacted by Murray MacDonald, who was upset with some of the website's content. Detective Inspector Hall, in turn, informed Shelley Hallett about the site.

The website contained six statements from victims that were taken by Constable Dunlop and provided to Richard Nadeau. In most of the statements, the name of the victim had been redacted. The website also contained commentary setting out a conspiracy theory about a group of pedophiles operating in Cornwall, a theory bolstered by the inclusion of Ron Leroux's statements on the website.

The website was created by and registered to James Bateman. Mr. Nadeau supplied information to Mr. Bateman to post on the website. As discussed in the section on Classical College, Mr. Nadeau had come forward to the OPP in September 1997, alleging that he had been abused by a priest named Hector Côté while he was a student there. Unfortunately, Father Côté was deceased and the investigation could not proceed. Mr. Nadeau then attempted to organize a class action for alleged victims in Cornwall.

Detective Inspector Hall contacted Mr. Nadeau on July 31, 2000, and explained that some of the information on the site was incorrect and that his actions could harm the prosecution of Father MacDonald. Detective Inspector Hall also told Mr. Nadeau that the victims could be identified based on the information in their statements, even though their names were not given.

The projecttruth.com website was shut down on August 2, 2000. Detective Inspector Hall testified, "I think I was largely responsible for shutting down the first one [website]."

However, throughout the month of August, the OPP continued to receive complaints about items that had been posted on the website. Detective Inspector Hall received a call from Robert Robineau, Officer in Charge of the Cornwall jail,

who was concerned about allegations on the website against Father Kevin Maloney. Father Maloney had been a part-time chaplain at the Cornwall jail since 1996. Detective Inspector Hall also received calls from victims and family members of victims and witnesses in the Project Truth cases. These individuals were concerned by the fact that the victims could be identified based on the information in the statements.

A second website, projecttruth2.com, was launched on August 26, 2000. This site was run by Mr. Nadeau alone. Detective Inspector Hall contacted regional Crown James Stewart, who advised him to speak to Ms Hallett. The response of the Ministry of the Attorney General to the website is set out in Chapter 11.

Detective Inspector Hall was concerned about the website because it listed certain people as pedophiles who were not even suspects, and because it contained incorrect information that would mislead the community. Detective Inspector Hall also thought victims would be less willing to come forward if they believed that their information would be posted on the site. He said he contacted Mr. Nadeau and asked him to change or remove the incorrect information. Detective Inspector Hall testified, "I think that strategy caused Mr. Nadeau to take a lot of his information off the website."

Project Truth also became concerned about the contact that Mr. Nadeau was having with alleged victims. As mentioned in the section on Keith Jodoin, Mr. Nadeau had some contact with complainant Marc Carriere, which may have contributed to the charges against Mr. Jodoin being withdrawn.

On September 12, 2000, the CPS received a complaint from C-8, who claimed that Mr. Nadeau had left a message on his answering machine, threatening to publish certain information about his relationship with Ron Leroux, as well as the assault against a teenage girl. The OPP investigated. A brief was submitted to and reviewed by the Crown, which determined that no criminal offence had taken place.

Mr. Nadeau's website also became a major issue during the first trial of Jacques Leduc. The OPP assisted the Crown in dealing with the matter.

The website was shut down on April 13, 2001, but resurrected around February 15, 2002. The website is still in operation, but it has not been updated since Mr. Nadeau's death in 2006. Despite his concerns about the website, Detective Inspector Hall said the following about Mr. Nadeau in his testimony, "I had great compassion for the man, and he believed what he was doing was right and, you know, he just took it too far."

The site made information (and misinformation) widely available to the public, and in the relatively small community of Cornwall, the website was a significant source of gossip and innuendo. This type of citizen journalism had even

more impact because the public was less knowledgeable about and familiar with websites than it is today. In 2000, the Internet was a relatively new medium, and the OPP also probably had little experience in handling this type of website.

Bill 103: Proposal for a Public Inquiry

In 2000, Mr. Guzzo began advocating for a public inquiry. He introduced Bill 103, “An Act to establish a commission of inquiry to inquire into the investigations by police forces into sexual abuse against minors in the Cornwall area.” The bill passed first reading on June 21, 2000.

Before 2000, Mr. Guzzo’s comments in the media were mainly directed at perceived flaws in the Project Truth investigation. Around the time of his demands for a public inquiry, Mr. Guzzo began suggesting that the OPP were either incompetent or part of a cover-up, both to other members of the legislature and in the media.

In order to gain support for his bill, Mr. Guzzo sent a letter to the other members of the legislature in October 2000. This letter contained numerous inaccuracies that formed the foundation for Mr. Guzzo’s claims of incompetence or corruption. I will not set them all out here but will outline some of those claims that relate to the OPP.

Mr. Guzzo stated in this letter that the Cornwall police had conducted a review of complaints about a pedophile group in 1992 or 1993 and determined that there was no impropriety. According to Mr. Guzzo, this finding was reviewed by the Ottawa police, which determined it had no time to devote to the issue and closed its file. It was reviewed again by the OPP who also found no evidence of a pedophile ring. Mr. Guzzo then pointed out that the 115 charges laid by Project Truth must have been overlooked in the previous investigations.

Mr. Guzzo was mistaken in these assertions. The mandate of Project Truth was much broader than the previous investigations, which looked at a specific complaint of abuse by one individual, a narrow conspiracy to obstruct justice, and a possible extortion. The scope of the previous investigations are explained in Chapter 6, on the institutional response of the Cornwall Police Service, and in an earlier section of this chapter entitled “Commencement of Detective Inspector Tim Smith’s 1994 Investigations”.

Other major issues raised by Mr. Guzzo included the missing materials that were delivered to the Ministry of the Attorney General on April 7, 1997 (Mr. Guzzo said they contained an inculpatory statement from a perpetrator, which was incorrect), and the OPP’s delay in conducting investigations in Florida. I note that both of these issues had been addressed by OPP investigators in their April 1999 interview with the *Toronto Sun*.

Mr. Guzzo also claimed in this letter that he had met with 45 alleged victims and that the OPP had stated it had interviewed about 900 alleged victims. Although the OPP said it had taken hundreds of statements, it had not claimed to have spoken with this many victims.

At the hearing, Detective Inspector Hall testified that the inaccuracies or misleading statements in Mr. Guzzo's letter could have been easily verified "[i]f there was an effort put forward."

Bill 103 passed second reading by a vote of 45 to 3 on October 12, 2000, and was referred to committee. On October 16, 2000, Detective Inspector Hall met with Detective Inspectors Chris Lewis and Klancy Grasman, and Marilyn Murray, from the OPP's media relations department, to discuss how to respond to Mr. Guzzo's allegations. Deputy Commissioner Lewis testified, "I was really gearing up for a media strategy here. I wanted to get the facts out as opposed to the misinformation that was out there."

It was determined that Detective Inspectors Hall and Lewis would meet with Mr. Guzzo, as arrangements were already underway for Detective Inspector Hall and Mr. Guzzo to meet. They also determined that they needed to communicate the facts both internally and to the public. Detective Inspector Hall was to prepare a chart to respond to Mr. Guzzo's claims. Detective Inspector Hall also prepared an explanatory document for Ms Murray, in which he noted that there was no evidence that the CPS was involved in a cover-up in the Silmsen matter. Although this was the conclusion that Detective Inspector Hall had reached in his conspiracy investigation, it is noteworthy that he felt comfortable making this statement given that at the time he was still awaiting a Crown opinion on his conspiracy brief. It is unfortunate that the OPP did not develop a media strategy to respond to Mr. Guzzo's public claims much earlier.

The meeting between Mr. Guzzo and Detective Inspectors Hall and Lewis took place at Queens Park on November 22, 2000. This was the only meeting that Mr. Guzzo had with Detective Inspector Hall. Detective Inspector Hall testified that he spent most of the meeting explaining the inaccuracies in Mr. Guzzo's comments and letters. Deputy Commissioner Lewis said that the conversation was friendly, and that he explained to Mr. Guzzo that they were there to tell him that he had been given some misinformation. Mr. Guzzo testified that during this meeting Detective Inspector Hall pointed out a few issues where he was in error and he acknowledged those errors.

However, Mr. Guzzo and Detective Inspector Hall offered conflicting testimony on the rest of the items discussed during this meeting. One of these was the issue of the names of alleged victims. According to Mr. Guzzo, they discussed the names of some of the individuals that they had both spoken to and confirmed that the names were the same. Detective Inspector Hall testified

that he asked Mr. Guzzo to provide the names of other victims and he declined to do so.

There was a discussion about the Ministry of the Attorney General's binders and the receipt Detective Inspector Hall had signed, which had appeared in the newspaper. Detective Inspector Hall testified that he showed Mr. Guzzo the indexes for the binders so that Mr. Guzzo could see what the OPP had and when. According to Mr. Guzzo, the OPP's explanation did not resolve his questions to his satisfaction.

Mr. Guzzo recalls asking Detective Inspector Hall about registration slips from Fort Lauderdale hotels. He testified that Detective Inspector Hall patted his briefcase and said, "We have them," but did not show him the slips. Mr. Guzzo also said that Detective Inspector Hall told him that one of the slips had Bishop LaRocque's name on it. Detective Inspector Hall testified that he did not pat his briefcase, that he not have the registration slips with him, and that he would not have said that Bishop LaRocque's name was on the slips.

Detective Inspector Hall and Mr. Guzzo also discussed the destruction of the videotapes. Mr. Guzzo testified that when asked about the tapes, Detective Inspector Hall answered, "The man was dead. The man's dead. You can't prosecute a dead man. The evidence wasn't necessary."

Mr. Guzzo had suggested in the legislature that the OPP were either incompetent or part of a cover-up. Detective Inspector Hall's notes of the meeting state that Mr. Guzzo said that "was not his intent. He was referring to CPS. He apologized to the OPP for his critical comments and misinformation." Mr. Guzzo, on the other hand, testified that he apologized for alleging that the OPP was incompetent, but stated that he did not take back the alternative—a cover-up.

Detective Inspector Hall testified that he left the meeting with a feeling that Mr. Guzzo was satisfied with the answers that the OPP had provided. He also left with the feeling that Mr. Guzzo was genuinely concerned about alleged victims of sexual abuse. Deputy Commissioner Lewis said that after the meeting, "we felt comfortable that we had got the message across that we'd wanted to get across." Mr. Guzzo testified that he had sympathy for Detective Inspector Hall and his team given how difficult the investigation was and the hesitancy of people to come forward. Mr. Guzzo testified that he had a very positive impression of Detective Inspector Hall and that he believed Detective Inspector Hall was working in a straitjacket.

Detective Inspector Hall testified that Mr. Guzzo did not make any public statements about Project Truth for a few months after this meeting, "But then he carried on as if I'd never met with him." Given the different views of the

issues discussed or resolved at that meeting, in hindsight it would have been prudent for the OPP to send Mr. Guzzo a letter confirming the contents of their discussion. Mr. Guzzo's bill for a public inquiry died on the order paper in the months following this meeting.

Garry Guzzo's Statements in the Legislature

Mr. Guzzo reintroduced his legislation calling for a public inquiry in May 2001 and reinvigorated his critique of Project Truth. He threatened to name some of the alleged perpetrators who had not been charged in the legislature, where he would have immunity from prosecution. Ultimately, he did not follow through with this threat.

On June 27, 2001, Mr. Guzzo raised the issue of the Leroux/Seguin tapes in the legislature. He stated that the OPP had seized:

a suitcase containing 24 or more pornographic movies. Some of these were commercially edited and sold and some were homemade, some from a camera mounted at the foot of the probation officer's bed ...

... this evidence, these films have been in the hands of the OPP for over six years. The evidence has never been tendered in court proceedings and indeed many of the predators in these movies, both the commercial movies and the homemade movies, have never been charged. I'd like to ask you, sir, where those films are located at this time ...?

...

... on November 22 of last year, when I was debriefed by the OPP, visited by Detective Inspector Hall, the lead investigator for Project Truth, and one of his superiors from Orillia, I put that same question to Detective Inspector Hall. Here was his answer. He said, "Mr. Guzzo, we don't have those tapes. We don't have those films any more. We destroyed them."

I said, "No, no, you can't destroy evidence in this province. That's against the law." He said, "The man was dead; he wasn't going to be charged."

I said, "What about the other people in the movies? What about the kingpins of this organization who were also seen in those movies?"

He shrugged his shoulders, the same way he did when he couldn't explain the 115 charges that were missed three times.

Mr. Guzzo then declared that copies of the movies had been found and that a citizens' group had them. As mentioned above, other than telling Mr. Guzzo that Ken Seguin was dead, Detective Inspector Hall denies making the statements attributed to him.

Detective Inspector Hall responded by writing to Mr. Guzzo on July 18, 2001, and asking him for assistance in determining who was in possession of the movies mentioned in the legislature. Mr. Guzzo wrote back that he did not have copies of the films and that he had not seen them. Mr. Guzzo stated that he had urged the person who had the tapes to provide them to the OPP and stated that he would contact this person again.

My findings in relation to the videotapes and their apparent destruction are set out earlier in this chapter, but I repeat here that I neither heard nor saw any evidence to suggest that the videotapes seized from Mr. Leroux's home contained proof of group pedophilic activity in Cornwall, or that a copy of the tapes exists today. Mr. Guzzo acknowledged during his testimony at this Inquiry that he had never seen the tapes nor spoken to anyone who had. In my view, given his lack of information, the suggestion that the OPP destroyed evidence of the "kingpins" of a pedophile ring engaged in criminal activity was extremely irresponsible. It is unfortunate that Mr. Guzzo continued to make these suggestions after the OPP attempted to address his concerns both in the media and in their meeting on November 22, 2000.

Public Pressure to Wrap Up the Investigation

Both Detective Inspector Hall and Deputy Commissioner Lewis testified that the negative media attention, particularly from Mr. Guzzo, was generating public pressure to wrap up Project Truth.

By the fall of 2000, the investigative phase of Project Truth had effectively ended. The last Crown brief was submitted on July 20, 2000. The OPP was waiting for an opinion from the Crown on this brief, as well as five others. The delay in the review is discussed in the "Conspiracy Investigation" section of this chapter and in Chapter 11.

Deputy Commissioner Lewis received a call from Chief Anthony Repa of the CPS on December 6, 2000, and asked why the Crown Law Office was taking so long to review the briefs, one of which related to the conspiracy investigation involving the CPS. Chief Repa mentioned that the CPS was getting beaten up in the press. Deputy Commissioner Lewis told Chief Repa that he was waiting to hear back from regional Crown James Stewart on the matter. Deputy

Commissioner Lewis testified that he did not feel that the CPS was putting pressure on him but rather, “It was just another indicator to me that this thing is still hanging out there and it’s affecting a lot of people.”

An article appeared in the *Standard-Freeholder* on January 9, 2001, in which the mayor of Cornwall, Brian Sylvester, stated that he wanted a report on Project Truth to be delivered to City Council as soon as possible. The article noted that a report on Project Truth was initially expected in October 2000. Deputy Commissioner Lewis testified that he was unaware of any promise to deliver a report, but said, “[T]here is [was] certainly a will by a number of people to have this over and done with, including us [in] the OPP.”

In January 2001, Bishop LaRocque also made public statements requesting the OPP to declare an end to its investigation. He was quoted in the *Standard-Freeholder* asking for Project Truth to end “so the process of healing can begin.”

Deputy Commissioner Lewis stated at the hearing that there was a desire to state publicly that the investigation was over. The negative publicity Project Truth attracted had a bad effect on morale within the OPP. Deputy Commissioner Lewis noted that it could discourage further victims from coming forward, and it could harm the OPP’s reputation and ability to do its job more generally. In addition, there was a concern that suspects needed to be treated fairly. I agree with this concern. Delays in completing investigations can be difficult for all parties involved, whether they are complainants or suspects.

Announcement of End of Project Truth

The OPP received an opinion from Crown Lorne McConnery on August 15, 2001, on the outstanding Crown briefs. Mr. McConnery recommended that no charges be laid.

The OPP issued a press release on August 22, 2001, stating: “The OPP found no evidence that a pedophile ring operated in the city. There is nothing to indicate individuals operated in concert with each other to commit offences.” The press release further declared, “All information provided to or uncovered by investigators was followed up.”

This announcement did not quell public criticism. Mr. Guzzo continued to insist that there was a pedophile ring operating in Cornwall and that the videotapes, had they not been destroyed, would have provided enough evidence to convict all those who were not charged in Project Truth. Mr. Guzzo also made new inaccurate claims. In an article published September 9, 2001, Mr. Guzzo said that the Ministry of the Attorney General had recently instructed the OPP not to lay charges despite the fact that “Project Truth investigators ‘strongly recommended’ to the ministry that charges be laid against five men who [Mr. Guzzo] called ‘the kingpins’ behind the organized sexual abuse.”

In addition, the OPP's assertion that there was no ring was further undermined in September 2001 during trials involving the allegations made by Claude Marleau. During Father Lapierre's trial, he told the Court under cross-examination that other priests had confided in him about sexually abusing boys. He did, however, deny being part of a ring. During the George Lawrence trial, the media reported that Mr. Marleau alleged he had been passed around "like a toy" between the various accused.

Need for a Coordinated Media Strategy

As noted in Chapter 4, the media study conducted for this Inquiry concluded that the most prevalent theme in coverage of historical sexual assault in Cornwall was police ineffectiveness. The fact that the OPP were unable, or unwilling, to correct some of the inaccuracies in the media (that Project Truth was focused on uncovering a pedophile ring, that it was the continuation of three earlier investigations, and that the numbers of victims coming forward was shocking) probably contributed to the negative portrayal of the investigation.

The OPP failed to provide appropriate information to the community through the media with respect to allegations of sexual abuse and the related investigations. A coordinated media strategy is essential in maintaining public trust, ensuring a smooth investigation, and minimizing inaccurate, exaggerated, and fear-inducing messages. As Dr. Peter Jaffe testified:

The media is hungry for a story. If the media is seeking a story but there's no information available, if there's no promise that there is a group, you know, that's going to share information on a timely basis when it can be made public, it creates all kinds of speculation, all kinds of stories that have no basis in fact.

Those dangers materialized during the Project Truth investigation when media became overly focused on unsubstantiated rumours of a ring or "clan." This led to an effort by the OPP to downplay facts, which led in turn to much public criticism. The OPP should have said what its real focus was and how that focus was different from 1994. Accordingly, I recommend that in future special projects, a communications plan be developed at the outset of any investigation. This could be the responsibility of the media liaison designated for all cases that pass the threshold for major case management. Developing a media strategy includes clarifying roles and communication lines within and between agencies.

Guidelines for dealing with the media in large-scale, multi-victim, multi-offender investigations were available at the time of Project Truth. I point in

particular to the report produced following the completion of Project Jericho in nearby Prescott, which included a section on how to handle the media. It is unfortunate that these resources were not utilized.

A coordinated media strategy should be much easier for the OPP today. I was heartened by the evidence of Deputy Commissioner Lewis, in particular the following:

And organizationally now, the mindset—and we’ve engrained this [in] everyone that we can—that we’ll tell the media all we can, except those things that might jeopardize an investigation or may hurt the judicial process in some way or identify a victim or witness unnecessarily.

So that mind shift is very, very prominent in the OPP. We have way more people trained in media relations, including CIB inspectors. They didn’t take a media relations course in those days. And that’s no [dis]respect to Tim or Pat or anyone; that just wasn’t the way we operated at the time. We weren’t going to tell anybody anything anyway, so there wasn’t any much reason to train anybody.

But that’s changed a lot, too. And the CIB inspectors are expected to be out there, not curtailed from being out there.

Conspiracy Investigation

As previously discussed, the mandate of Project Truth was to investigate the allegations in the Fantino Brief. The brief contained a number of specific allegations of sexual abuse. In addition, the brief contained a series of claims that there was an organized group of sexual abusers who held prominent positions within the community and were able to use these positions to stifle complaints and investigations into sexual abuse. In particular, this group was allegedly responsible for the illegal settlement that ended the investigation into David Silmser’s complaint against Father Charles MacDonald in 1993. These people also allegedly attended a number of locations together where they committed acts of sexual abuse.

Although the public believed that the OPP was investigating whether or not there was a group or ring of organized pedophiles operating in the Cornwall area, I am of the view that the OPP’s investigation was much narrower, and was very closely linked to the specific allegations contained in the Fantino Brief. After reviewing the brief that was submitted to the Crown for review, as well as

the statements taken by the investigating officers, I find that the OPP investigated three distinct issues:

1. whether certain individuals were members of a group or “clan” of pedophiles, who attended specific locations together and committed sexual abuse there;
2. whether certain individuals conspired to obstruct justice with the illegal settlement with David Silmsen that resulted in halting the investigation into Father MacDonald, and whether the conspiracy was formed during a “VIP meeting” on Stanley Island in late summer 1993; and
3. what happened to the pornographic tapes that were seized from Ron Leroux’s residence in 1993.

The OPP was not investigating the larger issue of whether there was an endemic problem of sexual abuse and whether prominent people were acting together to perpetrate or cover up this abuse.

Mandate of the Conspiracy Investigation

At the April 24, 1997, meeting between the OPP and Crowns Peter Griffiths, Robert Pelletier, and Murray MacDonald, it was decided that all the allegations in the Perry Dunlop materials would be investigated. Detective Inspector Hall testified that the conspiracy investigation was based on the Fantino Brief and the April 7, 1997, letter from Perry Dunlop to the Solicitor General. Detective Inspector Hall explained, “Well, this mandate was derived because of the meeting with Mr. Griffiths, based on Perry Dunlop’s material ... We framed it fairly tightly. We weren’t there to investigate everything else that happened.”

The “Clan of Pedophiles” Allegation

The first allegation was that there was an organized group, ring, or “clan” of pedophiles. This allegation stemmed from the statements made by Ron Leroux in the Fantino Brief and to the OPP in Orillia.

In his statements, Mr. Leroux named the members of this group and alleged that they had a number of regular meeting spots, namely:

- Cameron’s Point;
- Birch Avenue, Fort Lauderdale, Florida, a “pedophile strip” frequented by under-aged prostitutes in Florida;
- the Saltaire Motel in Fort Lauderdale, Florida;

- Malcolm MacDonald's summer residence on Stanley Island;
- Ken Seguin's house in Summerstown; and
- the St. Andrews Parish house.

Mr. Leroux claimed to have witnessed certain members of the clan abuse young people in some, but not all, of these locations. The allegations of sexual abuse were investigated separately by Project Truth rather than as part of its conspiracy investigation. As outlined in previous sections of this chapter, charges were laid against a number of alleged clan members, although not based on the claims made by Mr. Leroux. Other complainants had come forward with allegations against these individuals.

The Fantino Brief contained a number of statements from witnesses who claimed that they had seen a number of the individuals named by Mr. Leroux at some of the locations that he mentioned.

The Conspiracy to Obstruct Justice Allegation

The second allegation was that members of the clan had conspired to obstruct justice by reaching an illegal settlement with David Silmsner that caused him to withdraw his complaint against Father MacDonald in 1993. This allegation was similar to matters that were investigated by Detective Inspector Tim Smith in 1994, but the Fantino Brief contained an additional claim. Mr. Leroux alleged that there was a "VIP meeting" at Malcolm MacDonald's summer cottage on Stanley Island in late August/early September 1993. Constable Dunlop pleaded in the amended statement of claim of his civil suit that it was at this meeting that the decision to enter into the illegal settlement with Mr. Silmsner was reached.

Mr. Leroux said in his affidavit that he did not attend this meeting, but he saw the participants arrive and was told about the meeting afterwards by Ken Seguin.

The Incriminating Videotapes Allegation

Mr. Leroux also alleged that in 1993, the OPP had seized pornographic videotapes during a search of his home. Mr. Leroux claimed that Mr. Seguin told him that the tape collection was his and that the tapes would "clinch" a conviction against him for sexual assault. Mr. Leroux was told by the OPP that the tapes were going to be destroyed.

MPP Garry Guzzo later alleged that the tapes were homemade and commercial pornography, and that some of them contained the "kingpins" of the group of pedophiles.

In the affidavit included in the Fantino Brief, Mr. Leroux did not allege that any of the OPP officers involved in destroying the tapes were members of the clan.

Although the tapes could have provided some evidence for charges against members of the clan, this allegation is only loosely tied to the investigation of any sort of conspiracy. Nonetheless, this investigation was contained in Project Truth's conspiracy brief.

Other Items Contained in the Conspiracy Crown Brief

The Crown brief also contained materials that were not directly related to any of these three issues, and were not investigated by the OPP. For example, it contained the receipts signed when Constable Dunlop delivered binders to three government offices in April 1997, as well as materials from a Cornwall Police Service (CPS) investigation into death threats uttered against Constable Dunlop's daughter.

The Need for a Broader Mandate

It appears to me that Project Truth simply took Constable Dunlop's theory of what the conspiracy entailed and who was involved in it, and investigated it in order to disprove it. The investigation was narrowly limited to an examination of whether there was a group of abusers who met in the locations mentioned by Mr. Leroux and who covered up one specific allegation of sexual abuse. If the OPP could not find credible evidence that the particular events alleged by Mr. Leroux had occurred, then it could conclude that there was no conspiracy, and thus no pedophile ring operating in the Cornwall area.

The officers did not reflect upon Constable Dunlop's materials and ask whether Constable Dunlop had found a problem but misunderstood its nature. Nor did they try to determine whether there were other ways that people could be assisting one another in perpetrating or covering up allegations of sexual abuse, using the Dunlop materials only as a starting point. It is my view that that the community did not just want an answer about the Silmser case—they wanted to know if there was an endemic problem of sexual abuse in their community and they wanted to know if people were misusing their authority to perpetrate it or cover it up. Although the Dunlop materials focused on the allegations of a ring, as well as the settlement with David Silmser and the CPS decision to drop the investigation, statements in the materials also insinuated that there were other instances in which complaints had not been pursued or complainants were discouraged from pursuing a complaint.

For example, in Constable Dunlop's amended statement of claim, he pleads that the Silmser settlement and CPS's refusal to pursue the complaint were "part of a greater conspiracy to keep a lid on allegations of sexual abuse involving prominent individuals in Cornwall" and that the CPS and others "conspired to

derail the investigation involving Father Charles MacDonald and the late Ken Seguin as such an investigation would ultimately lead to the investigation of several prominent individuals in the Cornwall community.”

Constable Dunlop also pleads that the Catholic Church had concealed sexual abuse of children by priests and that “the suppression of the identity of sexual offenders was purposely done to prevent the filing of both criminal and civil complaints.”

In addition, the Fantino Brief contained statements which suggested that there were attempts to quash complaints beyond the Silmsers settlement.

One of these was a statement from C-99, who alleged that her children had been abused and that she had been told by a CPS officer that “it would be tough to prove sexual assault given the age of the victim.” C-99 claimed that she then sought legal advice from Malcolm MacDonald, who told her to “back off.”

Another statement in the Fantino Brief alleged that C-15 had asked Malcolm MacDonald to lodge a complaint about abuse he had suffered at the St. Joseph’s Training School in Alfred, but Mr. MacDonald “stalled continually and never did proceed with the file.”

The Dunlop materials and Mr. Leroux’s statements also insinuated that various perpetrators either passed children between them or, at least, were aware or should have been aware that others were committing act of abuse. Alternatively, they suggest that in the youth criminal justice system and the Church, young people were exposed to and abused by a number of people working in those institutions, and that people in these institutions ignored complaints of abuse.

Constable Dunlop’s April 7 letter mentions the case of Albert Roy, who was abused by probation officer Nelson Barque. When Mr. Roy complained about the abuse to Ken Seguin, he testified that Mr. Seguin then abused him.

The Fantino Brief contained a statement from Carole Deschamps, who said, “Malcolm [MacDonald] and Ken [Seguin] shared a lot of clients,” and, “I believe there was a nice little pedophile ring going until Perry Dunlop came along. I believe that alot [sic] of people knew what was going on with Malcolm, Ken and Father Charles [MacDonald].”

There was also a newspaper article included in the brief about Benoit Brisson’s case against Father Gilles Deslauriers. Shortly after Mr. Brisson told the Bishop about his abuse, the Bishop advised the Brissons that Father Deslauriers would be removed from parish work and be sent for treatment. Notwithstanding this promise, Father Deslauriers was seen working in another parish.

The materials Constable Dunlop provided thus could have been seen as an indication that there was a larger problem that went beyond the David Silmsers case.

Certainly, the wording of the mandate of Project Truth would have permitted an investigation into these larger issues:

In addition, it is alleged the suspects were able to terminate investigations and prosecutions against them by abusing their positions of trust within the community. It is alleged the Crown Attorney, the Diocese of Cornwall and the Cornwall Police conspired to obstruct justice in these matters.

However, the Project Truth investigators did not seem to turn their minds to the possibility that a group of pedophiles could have been operating in Cornwall, that institutions or individuals could have covered up complaints of abuse, or that abusers could have been passing children between them, even if Constable Dunlop and Mr. Leroux's version of the conspiracy could not be proven or simply was not true. If they had, the brief would have contained statements from victims who had allegedly been introduced by an abuser to other abusers, such as, for example, Claude Marleau, Keith Ouellette, and Robert Renshaw. It also would have contained statements from people such as Albert Roy and Robert Sheets, who alleged that they were abused by a person in a position of authority after they disclosed that they had been abused by someone else.

The brief did not contain the statements from C-15 or C-99, who alleged that they had been discouraged by Malcolm MacDonald and by a CPS officer from pursuing their complaints. Nor did it include the statement from C-21, who alleged that he was abused at a cottage by Jean Luc Leblanc and Mr. MacDonald and that he witnessed other children being abused.

Because the investigation into the conspiracy was limited to an investigation into the theory presented by Constable Dunlop and Mr. Leroux, the OPP was able to say only that the Dunlop/Leroux allegations were not true. The OPP was not able to answer the broader question of public concern; that is, the OPP was not able to reliably tell the public whether there was an organized group of people abusing young people and misusing their positions within the community to suppress complaints against them. The need to answer this question was particularly pressing given the number of complainants who came forward during the course of the investigation, the number of people accused and arrested, and the connections, both social and institutional, among those accused. The public's perception of the investigation was dealt with in more detail in the previous section, on the media.

Decision to Delay the Investigation

As previously discussed in this chapter, Detective Inspector Hall decided to delay the conspiracy investigation until after the allegations of sexual assault had been looked into.

Project Truth began interviewing witnesses in this investigation in the summer of 1998. The vast majority of the interviews were conducted in 1999 and 2000, with the CPS being investigated in earnest starting in January 2000.

There were two main reasons behind the decision to delay the investigation.

Detective Inspector Hall testified that his priority was to investigate claims of sexual abuse because, “I think crimes against a person are far more important than a conspiracy investigation. He said that if he had given the conspiracy investigation priority, it would have delayed the sexual abuse investigations.

The second reason was that the officers hoped that they could obtain information in the course of their investigations into sexual abuse that would assist them in the conspiracy investigation. Certainly, if other victims had come forward who claimed that they had been abused by the clan members at the locations mentioned by Mr. Leroux, this would have been useful information. As it turned out, Detective Constable Joe Dupuis testified that they did not learn any useful information during the sexual assault investigations that was put toward the conspiracy investigation. They did of course gain information from alleged victims that would have assisted in a broader conspiracy investigation, had they been looking at issues beyond the allegations made by Mr. Leroux.

However, the decision to delay the investigation created a number of problems for Project Truth.

The first issue was that Project Truth had to maintain some distance from the Cornwall Police Service, given that the CPS was being investigated as one of the alleged conspirators. This became problematic in investigations where both the CPS and the OPP were involved in investigating a particular suspect, and in cases where a victim had allegations against multiple suspects that were divided between the two forces.

The need to maintain a distance between the two police forces contributed to some of the disclosure issues that arose during the Marcel Lalonde case. As discussed previously in this chapter, CPS Constable René Desrosiers was not aware of notes in Project Truth’s possession that related to C-8, one of the alleged Lalonde victims that Constable Desrosiers was responsible for. An issue arose in fall 1999 when defence counsel requested these notes and the trial had to be adjourned.

It also became problematic when Constable Dunlop delivered nine banker’s boxes of materials to the CPS in the spring of 2000. It became necessary for the CPS to review the material in the boxes to determine whether they contained materials that had to be disclosed in the Marcel Lalonde prosecution. Detective Inspector Hall testified that he did not have concerns about the CPS reviewing the boxes of material even though it was still under investigation for the conspiracy.

It is my view, however, that he should have been concerned, given that the boxes may have contained information that could have been relevant to the conspiracy. It was possible that the CPS's possession and review of these boxes could lead to allegations or rumours that the CPS had tampered with materials in them. Crown Shelley Hallett was cognizant of this fact and she made arrangements to transfer the boxes to the Project Truth office.

Further, when the OPP transferred C-10's allegations against Carl Allen to the CPS, it did not give C-10's complete statement to the CPS because the OPP was uncomfortable sharing certain information while the CPS was under investigation for the conspiracy to obstruct justice.

The delay in the conspiracy investigation also meant that the OPP had to maintain distance from the local Crown Attorney's Office throughout the duration of Project Truth. Crown Murray MacDonald was another one of the alleged conspirators. This added to the difficulties in securing a dedicated Crown for Project Truth cases.

An additional difficulty created by the delayed conspiracy investigation was the fact that suspects were unwilling to give information to the police once they had been charged with sexual abuse. Detective Inspector Hall explained that he did not try to interview Jacques Leduc for this very reason. Furthermore, at least one key witness/suspect, Malcolm Macdonald, died by the time the OPP completed its investigation and thus the OPP could not use him to implicate other conspirators.³⁶

The delay of the conspiracy investigation also meant that the decision to charge or not charge certain alleged perpetrators was delayed. Ms Hallett told Detective Inspector Hall that she wanted to review the conspiracy brief before she reviewed the briefs that related to Mr. Leroux and C-15's allegations of sexual assault.

Finally, as discussed in the previous section of this chapter, the delay of the conspiracy investigation added to the controversy in the media about the competence of Project Truth's investigation. In 1998 and 1999, a controversy arose over the fact that certain key suspects witnesses had not yet been interviewed. Indeed, these individuals had not been spoken to because the interviews of conspiracy witnesses had been strategically delayed. In addition, the OPP's delay in announcing a close to the conspiracy investigation allowed rumours in the community about the conspiracy to grow, while the OPP came under attack from various sources, such as Mr. Guzzo. By the time the OPP announced an end to its investigation, its credibility had been undermined and the announcement did not satisfy the public.

It is unfortunate that the lack of resources devoted to Project Truth by the OPP forced Detective Inspector Hall to delay some investigations he was tasked

36. Malcolm MacDonald died on December 23, 1999.

with in favour of others. In hindsight, he should have asked for more resources in order to complete this investigation more quickly.

However, given that Detective Inspector Hall was faced with a resource issue, I find that he made a reasonable decision in prioritizing investigations into sexual abuse over a conspiracy that had already been the subject of one investigation, notwithstanding the difficulties that arose as a result of this decision.

The Set-Up of the Conspiracy Investigation

Although Detective Constable Dupuis held the title of lead investigator for the conspiracy investigation, in practice the investigation was headed and directed by Detective Inspector Hall. The other members of the Project Truth team also participated in the case.

Detective Inspector Tim Smith's role in the investigation was quite limited, because he had retired by the time the investigation was fully underway. He participated in only two interviews.

The investigation included a review of the statements that had been taken throughout Project Truth and during Detective Inspector Smith's 1994 investigation. The officers re-interviewed some people who had been previously interviewed, and they conducted interviews of witnesses who were not interviewed in 1994.

The primary method of investigation was statement taking. Detective Inspector Hall testified that traditional methods of investigating a conspiracy, such as wiretaps and surveillance, could not be used in this case, primarily due to costs and a lack of manpower. Detective Inspector Hall did not think that he would be able to obtain a court's authorization to use these methods to investigate a historical conspiracy.

I disagree. The police do not need a court order to conduct surveillance. There may have been some value in conducting surveillance of the key meeting places of the clan in order to find corroboration for Mr. Leroux's story, and to possibly detect any ongoing abuse occurring there. While some of the allegations made by Mr. Leroux were very old, he also alleged that the group had met on Stanley Island as recently as 1993, only four years before the beginning of Project Truth.

Investigation of the "Clan of Pedophiles" Allegation

The first aspect of the conspiracy investigation was the allegation that there was a group or "clan" of pedophiles operating in the Cornwall area, and that this group met at a number of different locations, such as the parish house in St. Andrews, Ken Seguin's house, Malcolm MacDonald's cottage, and the Saltaire Motel in Fort Lauderdale. These allegations were derived from the affidavits and statements made by Mr. Leroux, and from other statements contained in the Fantino Brief.

Allegations about sexual abuse committed by the alleged clan members were investigated separately from the conspiracy investigation, and separate Crown briefs were prepared where such briefs were warranted. Charges were laid against alleged clan members Father Charles MacDonald, Malcolm MacDonald, and Jacques Leduc. In other cases, a Crown brief was prepared but the officers determined that they did not have reasonable and probable grounds for charges.

A number of other people were accused by Mr. Leroux as being members of the clan, yet no complainants came forward during Project Truth alleging that these people had committed acts of abuse. No Crown briefs were prepared for these alleged clan members, no doubt because there were no individual complaints against them, other than Mr. Leroux's allegation that they belonged to the group.

Method of the Investigation

The OPP interviewed all of the individuals named by Mr. Leroux in paragraph six of his affidavit as attending the various meeting places of the clan of pedophiles. Some of these people were complainants who alleged that they had been abused by individuals named by Mr. Leroux as members of the clan. Others did not disclose witnessing or experiencing any abuse. All of the alleged members of the clan were also interviewed. It does not appear that the OPP ever cautioned any of these people during these interviews. Not all of these statements were included in the Crown brief.

For many of the interviews, the officers prepared a list of questions that focused on determining whether the person knew any of the other alleged clan members, and whether that individual had been to any of the alleged meeting places of the group. The questions were modified somewhat for each person who was interviewed, but they were similar because many of the people were allegedly seen at the same places or events.

I agree with the OPP's approach, because in order to address Mr. Leroux's allegations, the OPP had to assess whether the alleged clan members knew one another and whether they had been to any of the locations where Mr. Leroux alleged he had seen them.

However, I find that the questions asked during these interviews were superficial; it appeared that the officers were simply going through the motions. The set list of questions was asked in sequence, often with little or no follow-up, particularly in exploring the nature and depth of people's connections with one another.

I also find that the questions lacked subtlety and lent themselves to denials. It is worth noting that many of the people who were being interviewed would have seen Constable Dunlop's statement of claim, given that they were being sued

by him. Father Kevin Maloney told the interviewing officers this, saying, "That's why I'm not shocked by the questions you're asking, I know where you are going." Thus I question the method of running the suspects sequentially through the list of the alleged clan members and clan locations, given that it would have been clear to many of the interviewees what information the OPP would have needed to make their case.

It also puzzles me why the officers asked questions such as, "Have you heard of the term, 'Clan of Pedophiles'? Can you give me your opinion on this matter?" Questions like this cause me to question the objectivity of this part of the investigation.

Investigation of Allegations in Fort Lauderdale, Florida

According to Mr. Leroux, members of the clan were known to frequent the Saltaire Motel, as well as a "pedophile strip" on Birch Avenue, in Fort Lauderdale, Florida. Mr. Leroux claimed to have witnessed abuse perpetrated at the motel by Malcolm MacDonald and a priest named Richard Orlando, who the OPP later discovered was deceased.

On March 20, 1999, an article appeared in the *Ottawa Sun* in which MPP Garry Guzzo criticized the OPP for failing to interview the owner of the Saltaire Motel. Mr. Guzzo also claimed to have seen "registries from motels on a strip of Ft. Lauderdale, Fla., notorious for its underage male prostitutes" that contained "many of the names" of people who were related to the Project Truth investigation.

It was only as a result of the media coverage that Detective Inspectors Hall and Smith went to Fort Lauderdale in May 1999 to interview the motel owner. When asked whether these allegations fell within Project Truth's mandate, Detective Inspector Hall responded that "we had no jurisdiction in Florida." He pointed out, however, that there was significant concern in the media and also that Detective Inspector Smith was already in Florida to testify at a murder trial.

During their trip, Detective Inspectors Smith and Hall went to the Fort Lauderdale Police Department and provided the names of the individuals identified by Mr. Leroux. A computer search revealed that none of these people had come to the attention of the Fort Lauderdale police. The police also advised that they had not received any complaints about sexual incidents occurring at the Saltaire Motel; the only complaint on file was a theft in 1994.

Detective Inspectors Smith and Hall then attempted to interview the owner of the Saltaire Motel, but he refused to answer any questions. The officers were able to speak to his wife. She did not give a statement, but she agreed to answer a written questionnaire that would be sent to her later by mail.

Detective Inspector Hall prepared and mailed a list of questions. Among other things, he asked whether certain alleged perpetrators had been to the motel. The motel owner replied that the only people on the list who had stayed at the motel were Mr. Leroux, Richard Orlando, and Malcolm MacDonald. He also sent the guest registration slips for these visits. In his reply, the owner told Detective Inspector Hall that Mr. Guzzo had not been to the motel nor viewed the registration slips. The owner said that he had never witnessed any sexual misconduct by guests staying at his motel.

The OPP did not interview the person who owned the motel before 1986, nor did the officers obtain registration slips prior to this date. Nor did they interview the former bookkeeper of the motel whom Mr. Guzzo testified that he spoke with, although the OPP may not have known of this bookkeeper at the time.

Although any incidents of abuse that occurred in Florida would be outside the OPP's jurisdiction, in my view the OPP should have informed their American counterparts of the allegations when they became aware of them in 1997. This would have allowed Florida police to investigate if they found it necessary, and would have alerted them to the possibility that Canadians were travelling to Florida in order to abuse children.

Given the limited resources afforded to Project Truth, I do not find it unreasonable that the investigators did not originally intend to visit Florida. However, they could have taken other investigative steps short of travelling to Fort Lauderdale, including organizing a telephone interview or a written survey (as they later did) to obtain information about whether any of the suspects had been guests of the motel. Doing so might have prevented the criticism that ultimately convinced Detective Inspectors Hall and Smith to make the trip.

The Problem With Investigating the "Clan of Pedophiles" Allegation

There was a fundamental conceptual difficulty with this portion of the investigation undertaken by the OPP. Proving that certain people had a personal or a professional relationship is obviously not enough to establish a criminal conspiracy. In order to lay a criminal charge, the police must be able to prove that these people acted in concert in some way to perpetrate or cover up allegations of sexual abuse.

Thus, establishing that certain people attended Malcolm MacDonald's cottage, Ken Seguin's residence, the St. Andrews Parish house, or the Saltaire Motel does nothing more than provide some corroborating evidence for Mr. Leroux's story. The police must be able to demonstrate that abuse actually occurred at that place, with that person present, and that the person participated in the abuse or knew about the abuse that was being perpetrated by others, or that when these people were together they were conspiring to commit criminal offences.

Without information from complainants of abuse or from informants, this would be very difficult to establish. Unfortunately, the only complainant and informant who alleged he knew of the “clan” abusing people in these locations was Mr. Leroux, whom the OPP found not to be credible. No one else came forward to substantially corroborate Mr. Leroux’s claims. I comment on Mr. Leroux’s credibility in the section “Investigations of Complaints of Ron Leroux and C-15.”

Investigation of the Silmsen Settlement

The Stanley Island Meeting

Ron Leroux alleged that in late August/early September 1993, there was a “VIP meeting” at Malcolm MacDonald’s cottage on Stanley Island. Mr. Leroux did not attend this meeting, but he claimed that Ken Seguin told him after the meeting that the allegations against Mr. Seguin were “settled.” In his amended statement of claim, Constable Dunlop pleaded that the purpose of this meeting was to reach a settlement with David Silmsen for his claims against both Father MacDonald and Mr. Seguin, and to terminate the criminal investigation into these allegations.

The alleged participants named by Mr. Leroux were all interviewed by the OPP. Bishop Eugène LaRocque provided an alibi, telling the officers that he was attending a meeting of the Canadian Conference of Catholic Bishops in Ottawa the weekend of the alleged meeting. The OPP did not follow up and confirm this alibi until requested to do so by Crown Lorne McConnery in July 2001.

Although this new allegation about the Stanley Island meeting was a major focus of the conspiracy investigation, the OPP also re-investigated the parties who had been investigated in 1994 by Detective Inspector Smith in relation to the Silmsen settlement.

The Lawyers

The OPP took a second look at the roles of the lawyers who were involved in reaching the settlement with Mr. Silmsen. Unlike in 1994, the Project Truth team spoke to Malcolm MacDonald’s and Jacques Leduc’s legal assistants.

Mr. MacDonald was interviewed on November 18, 1998, and on December 17, 1999, just prior to his death. It is worth noting that by this time, he had pleaded guilty to attempting to obstruct justice for his role in the settlement.

Mr. Leduc was not interviewed. Detective Inspector Hall believed that he was not likely to agree to an interview, given that he had been charged for sexual abuse. While this may have been the case, it is my view that the officers should have at least attempted to conduct the interview. There was no

harm in doing so, and they might have obtained some useful information for their investigation.

Sean Adams, the lawyer who provided independent legal advice to David Silmsen, was not re-interviewed.

Most of the new information obtained in this portion of the investigation thus came from Mr. MacDonald and from Mr. Leduc's former legal assistant, Hélène Jones.

Idea for the Settlement

In his interviews with Project Truth, Malcolm MacDonald told the OPP that he attended a meeting at the request of Mr. Leduc or the Bishop at which the three of them discussed making a settlement. According to Mr. MacDonald, Monsignor Donald McDougald was also present. Mr. MacDonald said that they never explicitly discussed the fact that the settlement would cause the criminal charges to be dropped, but that it was understood as the purpose of the settlement.

Bishop LaRocque testified, to the contrary, that he explicitly said in front of both Mr. MacDonald and Mr. Leduc that he did not want the settlement to interfere with the criminal process. The OPP should have been suspicious about the fact that the Diocese was interested in entering a civil settlement in the absence of a civil action or the concrete possibility of a lawsuit. There was a real need to explore what each of the parties believed that the settlement would achieve.

Drafting and Exchange of Settlement Document

In 1994, both Malcolm MacDonald and Mr. Leduc told the OPP that Mr. Leduc provided a precedent for the settlement, then Mr. MacDonald drafted the document, Mr. Leduc reviewed it and suggested changes, and Mr. MacDonald prepared the final version.

Mr. MacDonald told Project Truth that the word "criminal" was in the version of the settlement document that he sent Mr. Leduc for review. Mr. Leduc had reviewed the document thoroughly, in Mr. MacDonald's view, because Mr. Leduc sent back very detailed changes including minute differences in wording. Mr. MacDonald said that he made these requested changes, and only these changes, before he sent the final version of the document back to Mr. Leduc. Mr. MacDonald did not say this to the police when he was interviewed by Detective Inspector Smith in 1994. When Mr. Leduc was interviewed in 1994, he said that he made some minor changes to some of the document's wording, but that if the word "criminal" was there, he missed it.

One of Mr. Leduc's former assistants, Hélène Jones, provided further information about the draft settlement documents. She was interviewed by Detective

Constable Dupuis on August 9, 2000. A few hours after the interview, Ms Jones called the OPP and told Detective Constable Dupuis that at the time of the settlement, she used a Xerox memory typewriter that was able to retain a limited amount of text in its memory. According to Detective Constable Dupuis' notes, "after document was typed, Jacques asked H  l  ne to erase the memory of the typewriter with reference to this document."

Detective Inspector Hall testified that he did not take steps to obtain copies of the correspondence or draft agreements that went between Mr. Leduc's office and Mr. MacDonald's office. He did not ask the lawyers to voluntarily provide them, and he did not obtain a search warrant for these materials. It surprises me that Detective Inspector Hall did not think he had reasonable and probable grounds to obtain a warrant, given Mr. MacDonald's admission that draft copies of the settlement agreement had passed between the two offices.

It is also unfortunate that, just like Detective Inspector Smith, Detective Inspector Hall did not obtain a fax from Mr. Leduc to Mr. MacDonald that contained a draft settlement with handwritten notations. It is similar to the final settlement document but does not contain the illegal clause in paragraph two. Instead, there is a handwritten note indicating where paragraph two should be inserted, without the text of this paragraph, and the later paragraphs are renumbered. This document was disclosed by Mr. Leduc in a subsequent civil proceeding. Detective Inspector Hall admitted that this document would have been useful in his investigation.

In addition, Detective Inspector Hall repeated the error made by Detective Inspector Smith in failing to obtain documentation that could have indicated where the settlement monies came from.

Reconsideration of Jacques Leduc as a Suspect

Detective Inspector Hall testified that the fact that Mr. Leduc had been charged for alleged abuse did not cause him to reassess Mr. Leduc's motives in 1993 and think that perhaps Mr. Leduc had something to gain in reaching this illegal settlement. He obviously did not consider the possibility that Mr. Leduc could have been afraid that charges against Father MacDonald might have encouraged other alleged victims to come forward to accuse their abusers.

Crown Lorne McConnery had a very different view. Upon reviewing the brief, he noted:

It is quite clear that Mr. Leduc, having been subsequently charged with sexual assaults himself, is not necessarily the person he was considered to be in 1994. This subsequent investigation of both Leduc and Malcolm MacDonald put them both in a different light.

In retrospect, Leduc and Malcolm MacDonald could clearly be seen to have their own personal agenda in getting Mr. Silmser to sign this agreement in 1993. Without the evidence of Malcolm MacDonald, is there really a case to pursue against Leduc?

Mr. McConnery testified that once Mr. MacDonald died in December 1999, it would have been difficult to make a case against Mr. Leduc. However, the OPP should have made efforts to obtain all of the relevant documentation and then decided whether there was sufficient evidence to proceed in the absence of Mr. MacDonald's testimony.

Role of Sean Adams

It does not appear that the OPP reconsidered the role of Sean Adams, either, despite new information that they received from Malcolm MacDonald.

Mr. Adams told Detective Inspector Smith in 1994 that David Silmser had approached him and asked him to provide independent legal advice. Mr. Adams said that Mr. Silmser was a former client. He also said that he did not discuss the matter with Mr. MacDonald prior to the settlement, other than to set up a meeting at his office.

However, Mr. MacDonald told the Project Truth investigators that he had asked Mr. Adams to give Mr. Silmser independent legal advice. He also said that the two men had not met before.

Notwithstanding this important discrepancy, Mr. Adams was not re-interviewed during the Project Truth investigation.

By 2000, the OPP also would have been aware that Mr. MacDonald had instructed Mr. Adams to hold the settlement monies for Mr. Silmser in escrow until Mr. Silmser advised the police that he did not want to proceed with charges. This document was appended to Constable Dunlop's will-state. It certainly calls into question Mr. Adams' role in the settlement, as it demonstrates that Mr. Adams knew or ought to have known that the payment was contingent on charges being dropped. In addition, Mr. Adams witnessed David Silmser sign the direction to the CPS to terminate its investigation.

The Diocese's Understanding of the Effects of the Settlement

The OPP re-interviewed the Diocesan officials who had been interviewed in 1994: Bishop LaRocque, Monsignor McDougald, Gordon Bryan, and Father Denis Vaillancourt. Detective Inspector Hall testified that the officers approached Father MacDonald during the conspiracy investigation but he refused to be inter-

viewed. He had already been arrested for charges related to sexual abuse by the time Project Truth began.

The OPP received considerable evidence from these interviews to support Malcolm MacDonald's assertion that the parties who decided to enter the civil settlement with Mr. Silmsner understood that it would result in the suppression of criminal charges.

Although the officers did not interview Father Charles MacDonald, the OPP had some evidence from the 1994 investigation that suggested that he understood that the effect of the settlement was that the charges against him would be dropped. He told Detective Constable Michael Fagan in 1994:

Sometimes people in high profile positions panic at the thought of their name being publically [sic] connected to a crime, especially sexual assault rather than go through the agony of proving there [sic] innocence and enduring the stigma they are willing to buy the accusers silence ...

In Bishop LaRocque's interview with Project Truth, the Bishop said that Mr. Leduc and Mr. MacDonald explicitly told him that the settlement would only relate to a civil case and would not affect the criminal process:

[T]hey convinced me that it would be good for the Diocese, and for Father Charles, and for David SILMSER, if we were to settle this thing out of court. The civil effects, but they assured me that there was nothing to do with the criminal effects of the case.

This comment is a significant change from the Bishop's viewpoint in 1994. At that time, he told Detective Inspector Smith that the lawyers told him that the settlement would avoid scandal, preserve Father MacDonald's reputation, and allow the priest to continue his work. The Bishop denied, however, that in return for the money, Mr. Silmsner was not to bring charges against Father MacDonald.

I would note that at the hearings Bishop LaRocque testified that the lawyers told him that the settlement would allow Father MacDonald to continue his ministry, but that the complainant would remain free to follow the criminal process. He also testified that the settlement would keep things quiet and avoid scandal.

I fail to see how a civil settlement would avoid scandal, protect Father MacDonald's reputation, and allow him to keep working if criminal charges were eventually laid.

It is unfortunate that the officers did not present this discrepancy to the Bishop and probe the issue further with him in their interview. Clearly the Bishop's intentions in reaching the settlement and the representations made to him by the lawyers were key issues in determining whether anyone other than Mr. MacDonald believed that the purpose of the settlement was to force David Silmsers to withdraw his criminal complaint.

In addition, the officers had information that Detective Inspector Smith had obtained from Nancy Seguin in 1994 that the Bishop told her that "David Silmsers in return for the money was to stay quiet and not bring charges against Fr. Charlie." No statement was taken from her then, and given the new information obtained and the broader re-investigation, she was someone who could and perhaps should have been fully and properly interviewed.

The bursar, Gordon Bryan, told the officers that the purpose of the settlement was "so that Father Charlie would not be embarrassed by ah, all of this ah, kind of allegations coming out in the press."

Father Vaillancourt told the police, "[T]he decision was made to, to give him money to save the reputation of Father MacDonald whether he was guilty or not."

Monsignor McDougald was interviewed twice by Project Truth, once in relation to Mr. Leroux's allegations about sexual abuse, and once in relation to the settlement with Mr. Silmsers. In the latter interview, Monsignor McDougald denied having anything to do with the settlement and said that it was a matter between the Bishop and the lawyers.

David Silmsers's Perspective

It does not appear to me that the officers approached the investigation from the perspective of understanding why David Silmsers wrote the direction he did and then went to the Cornwall Police Service and dropped the complaint. Clearly he believed that he had to do this in order to receive the \$32,000 payment. In addition, it is clear from his interview with the Children's Aid Society in November 1993, a copy of which the OPP had had since 1994, that Mr. Silmsers thought he would lose the \$32,000 payment for talking to anyone, including the police or CAS, about his allegations. He was not interviewed as part of the conspiracy investigation.

Detective Inspector Hall explained that he did not interview Mr. Silmsers because "David Silmsers at that point had been interviewed several times by police officers ... and he wasn't too receptive." He added that if Mr. Silmsers had any useful information, "I'm sure if he had he would have told us." I find this explanation wholly unsatisfactory. Even though the police had a difficult time

dealing with Mr. Silmsers, at the very least an attempt could have been made to interview him.

Furthermore, the OPP did not explore the issue with the various other people involved in the settlement. Neither Mr. Leduc nor Mr. Adams were interviewed, and neither Bishop LaRocque nor Malcolm MacDonald were asked for many details about the conversations they had with each other or Mr. Silmsers around the time of the settlement, or why Mr. Silmsers would have believed that he had to drop the charges.

Interviews of CPS Officers

One of the biggest differences between Detective Inspector Smith's 1994 investigation into the conspiracy to obstruct justice and Project Truth's investigation into the matter was the fact that Project Truth interviewed and obtained police notes from most of the CPS officers involved. Detective Inspector Hall and Detective Constable Dupuis attempted to interview Constable Heidi Sebalj, but she was on sick leave at that time and declined to be interviewed. This is an unfortunate gap, given that Constable Sebalj was a key witness. It is equally unfortunate that she was unable to testify at this Inquiry.

The officers were provided with a list of written questions just prior to their interviews. Detective Constable Dupuis testified this was not normal procedure but that the purpose of this was to give the officers "a feel of where we were going to, to assist them in their thought process." This in my view, is unacceptable. Differential treatment should be discouraged, and the OPP should, except in exceptional circumstances, employ the same procedures when interviewing police officers as when interviewing anyone else.

I have only a few comments to make about these interviews.

I find it unfortunate that the OPP did not obtain the officers' notes prior to interviewing some of the other alleged suspects who had interactions with the officers, such as Murray MacDonald and Malcolm Macdonald. The OPP asked for and obtained the notes around the time of the CPS interviews in January and February 2000.

I also find it surprising that the OPP did not already have the notes of certain officers, particularly those who had contacts with David Silmsers, such as Sergeant Ron Lefebvre. These notes may have been necessary to disclose to the defence in the Father MacDonald trial, an issue that I address elsewhere in this chapter.

I find that the issues raised by Constable Dunlop in his statement of claim and in his other materials were addressed during the interviews with the CPS officers and the OPP received reasonable explanations.

Detective Inspector Hall testified that he did not think that it was a real possibility that the officers were corrupt and had done the things that Constable Dunlop had alleged.

All of the officers were interviewed in early 2000, with the exception of Chief Claude Shaver. Chief Shaver was interviewed on July 9, 1999. Detective Inspector Hall told Chief Shaver at the outset of the interview that he was “being interviewed strictly as a witness.” I am surprised by this comment, given that in 1994, Detective Inspector Smith believed that Chief Shaver would have had to have been involved in the conspiracy in order for it to work. It appears that the OPP was deviating from its typical practice of interviewing the key suspect last by interviewing Chief Shaver before the conspiracy investigation was well underway. Given what Chief Shaver was told, and the types of questions that were put to him, I question whether Project Truth ever considered him to be a suspect.

Interview of Crown Murray MacDonald

As part of the conspiracy investigation, the OPP purportedly took a second look at Crown Attorney Murray MacDonald’s role in advising the CPS to not lay charges against Father Charles MacDonald in 1993. The actions that were taken by Crown MacDonald at that time are explored in detail in Chapter 11, “Institutional Response of the Ministry of the Attorney General.”

Murray MacDonald was re-interviewed by Detective Inspectors Hall and Smith on December 17, 1998.

For the most part, the interview dealt with the allegations raised by Mr. Leroux. They questioned Murray MacDonald about whether he had been at a party at St. Andrews Parish, whether he had been at Ken Seguin’s house, whether he had been at Malcolm MacDonald’s cottage, and whether he knew of a cottage owned by a priest or Bishop at Cameron’s Point. The officers asked Murray MacDonald only a few questions about his role in the David Silmsier matter. In fact, Detective Inspector Smith said, “[I]n 1994 we interviewed you in regard to um, your part, or your knowledge of a settlement that took place between a David SILMSIER and ah, the Diocese of Cornwall. Um. I don’t plan to ah, re-address that issue. We’re satisfied with the results of that investigation.”

The questions that were asked about the events surrounding the settlement were highly leading. Some of them seemed to be in direct response to media allegations. For example, Detective Inspector Smith asked Murray MacDonald about whether he provided a written opinion, saying, “[I]t’s alleged that all of this was done in secret. But there is documentation ... both between yourself and the Cornwall police, in regard to these allegations ... and this is prior to ah, Perry Dunlop getting involved.”

It was not, in my view, a probing interview. There was no attempt to obtain new evidence about the events surrounding the settlement, including Murray MacDonald's conversations with Mr. Leduc and Malcolm MacDonald around the time of the settlement, and his conversations with Chief Shaver after the settlement.

Detective Inspector Smith admitted during the hearing that he did not view Murray MacDonald as a suspect in 1998. This is clear both from the leading questions he asked during the interview as well as from the nature of some of the questions. For example, Detective Inspector Smith asked:

[C]an you give us your ah, your stand on, and your position you take on sexual abuse, within your jurisdiction, and some, perhaps, some of the experiences, some of the things that you've had to do that, that um, have ah, would indicate your integrity?

This interview demonstrates the problem with tasking Detective Inspector Smith to revisit his previous investigation. Clearly he had made up his mind about certain people, and the issues were not addressed from a fresh perspective. Furthermore, Detective Inspector Smith had worked with Murray MacDonald during the prosecutions that arose from the investigation into the St. Joseph's Training School in Alfred. In hindsight, it was not wise to assign this task to Detective Inspector Smith.

This view of Murray MacDonald may also explain why Detective Inspector Smith did not see a problem with his presence at the April 24, 1997, meeting at the formation of Project Truth.

It appears that Detective Inspector Hall had a slightly different view. He testified that Murray MacDonald could have been a suspect but was being interviewed as a witness. If he said anything inculpatory, Detective Inspector Hall would have cautioned him.

It is my view that the OPP was not justified in immediately ruling Murray MacDonald out as a suspect in this case, at least not prior to a complete investigation. As mentioned in Chapter 11, his actions in this matter were not without flaws, as he should not have written the opinion letter to the CPS without a full review of all of the investigative materials, including possibly the settlement, and given that he had declared a conflict of interest. Rather than advising the CPS that they could not have proceeded with an unwilling complainant, he should have encouraged them to discover why Mr. Silmsen wanted to drop the complaint, and he should have been wary that counsel for the other parties involved in the settlement were contacting him and the investigating officer.

Although the OPP may have reached the same conclusion as in 1994, this interview demonstrates that the OPP did not attempt to re-evaluate Murray

MacDonald's role in the alleged conspiracy. The objective of this interview was to address Mr. Leroux's allegations against him, rather than conduct a fresh re-investigation of the David Silmser matter.

Destruction of Videotapes Found in Ron Leroux's Home

The issue of the tapes was raised in several of the affidavits and statements given to Constable Dunlop that were included in the Fantino Brief. My concerns about the destruction of these tapes are more fully set out earlier in this chapter, in the section "Videotapes Found in Ron Leroux's House by the OPP."

In his affidavit dated November 13, 1996, Mr. Leroux states that the OPP searched his house in November 1993 and seized a suitcase containing pornographic tapes. Mr. Leroux said that Ken Seguin later told him that "these tapes would 'clinch' a conviction against him." Mr. Leroux did not say that any other members of the clan were on the tapes. In his statement to the OPP in Orillia, Mr. Leroux mentioned that there were people other than Ken Seguin on the tapes and that Mr. Seguin had told him that "a lot of people were going down" if the tapes were discovered. C-8 mentioned the seizure of the tapes in his statement in the Fantino Brief, although he did not say anything about what was on them. Gerald Renshaw said that Mr. Seguin told him that he "had to get rid of some videotapes that would implicate him."

The Project Truth investigators interviewed the officers who seized the tapes, the officers who viewed them, and their supervising officer in fall 1998 and early winter 1999. They did not, however, interview the caretaker who had, according to Constable Steve McDougald, destroyed the tapes.

The tapes became a major issue in the media in the summer of 2001 when MPP Garry Guzzo mentioned in the legislature that pornographic tapes containing evidence of the "kingpins" of the pedophile network operating in Cornwall had been destroyed by the OPP. Mr. Guzzo also stated that the tapes had been found and that a citizen's group had them.

By this point in time, the Crown brief in the conspiracy investigation had already been submitted and was being reviewed. Lorne McConnery wrote to Detective Inspector Hall on July 11, 2001, and requested that he ascertain whether the tapes still existed and obtain them if they did. Detective Inspector Hall interviewed Carson Chisholm and wrote to Mr. Guzzo about the matter. Both denied having copies of the tapes. Mr. Guzzo told Detective Inspector Hall that he would attempt to contact the person who could provide them, but Detective Inspector Hall testified that he did not hear back from Mr. Guzzo about this.

Mr. Guzzo continued to raise the issue of the tapes in the press after Project Truth announced that its investigation was over, and he alleged that the OPP

would have been able to convict all those who had not been charged had the tapes not been destroyed.

It is unfortunate that the OPP's investigation into the destruction of the tapes did not silence the public speculation about what was on them. This is one of several issues where the OPP did not respond well to media reports.

Submission of the Crown Brief

The Crown brief for the conspiracy investigation was submitted on July 20, 2000. The brief consisted of nine volumes of materials and was over 3,000 pages long. This was the largest Crown brief prepared during the Project Truth investigation.

On top of the investigative materials that were included, Detective Inspector Hall and Detective Constable Dupuis prepared three summary documents: a timeline, a synopsis, and a document called, "Allegations of Constable Perry Dunlop." Each of these documents is described in detail below.

The first volume of the brief contained these summary materials, as well as the materials upon which the investigation was based, namely Constable Dunlop's statement of claim and his April 7, 1997, letter to the Solicitor General. Volumes 2 to 6 contained statements from civilian witnesses, organized alphabetically. Volumes 7 and 8 contained statements and notes from police officers. Finally, Volume 9 contained some of the documentary evidence that surrounded the Silmser settlement. It also contained materials that were not directly connected to the issues under investigation by the OPP, such as the death threats against Constable Dunlop's daughter. It remains unclear to me why some of these materials were added to this voluminous brief.

Timeline

The timeline set out the facts underlying the alleged obstruction of justice in the Silmser case, beginning with his complaint and ending with the termination of Detective Inspector Smith's investigation in 1994. The document was prepared by Detective Constable Dupuis and was reviewed and approved by Detective Inspector Hall.

Detective Constable Dupuis acknowledged that the majority of the entries deal with actions taken by the CPS. The timeline does not set out in detail the actions taken by other alleged conspirators, such as Crown Murray MacDonald or the lawyers involved in drafting the release and providing advice to David Silmser. For example, there is no mention of advice given by Murray MacDonald to Constable Sebalj throughout the investigation, no mention of conversation between Murray MacDonald and Malcolm MacDonald prior to the settlement,

no details about when Sean Adams was retained, and no details about draft documents for the settlement. Detective Inspector Hall testified that this document focused on the actions of the CPS because in his view, “most of the events revolved around the Cornwall Police Service.”

Synopsis

Detective Inspector Hall prepared the synopsis. It set out the background of Mr. Silmsker’s complaint to the CPS in 1992, the settlement, the subsequent police investigations into the settlement, Constable Dunlop’s civil action, the claims made in the Fantino Brief about a purported “clan of pedophiles,” the various elements of the conspiracy that had been alleged by Constable Dunlop and the media, as well as some of the investigative steps taken by the Project Truth team during their investigation.

I find this document problematic for a number of reasons.

First, it contains at least one key factual error. The synopsis states that in September 1993, the CPS was directed by Malcolm MacDonald to stop the criminal proceedings against Father Charles MacDonald. It says that Mr. MacDonald was acting as David Silmsker’s lawyer; however, Mr. MacDonald was actually the lawyer acting for Father MacDonald. Obviously, a request from an accused person’s lawyer to end a criminal investigation is far more suspicious than a request from a complainant’s lawyer to do so.

Second, it fails to mention key facts that would explain certain suspects’ alleged role in the conspiracy. For example, there is no mention of the legal advice that Murray MacDonald gave to the CPS that led the CPS to drop the complaint. Given that the brief was so voluminous, it was essential to set out the key facts for the Crown in this synopsis so that he or she could turn his mind to the appropriate issues while reviewing the statements contained within the brief, rather than requiring the Crown to glean the key facts from the materials as they were reviewed.

Third, the synopsis fails to clearly set out the mandate of the investigation. It is unclear after reading the synopsis whether the investigation was simply a re-investigation of the David Silmsker matter or whether it was broader.

Fourth, although Detective Inspector Hall testified that this document did not contain the findings of his investigation or any conclusions, I find that his opinion is implicitly reflected through his choice of language used to describe the allegations. For example, he notes that “Mr. Dunlop began a *crusade* aimed at exposing what he perceived to be a conspiracy in Cornwall” (emphasis added). Further, he repeats the language used by Crown Robert Pelletier in a 1997 memo to Peter Griffiths in which Mr. Pelletier attributes the conspiracy theory to “three unfortunate coincidences,” namely the conviction of Murray MacDonald’s father for sexual abuse, the advice given by Murray MacDonald to the CPS to not

lay charges in the Silmsner matter, and Malcolm MacDonald's conviction for obstruction of justice.

Finally, this document shows that the investigation has been completely framed by Mr. Leroux, Constable Dunlop, and the later media allegations, and that there has been little or no independent thought on how to investigate the broader claim that prominent people in the community have been obstructing justice.

"Allegations of Constable Perry Dunlop" Document

This document was prepared by Detective Inspector Hall, possibly with assistance from Detective Constable Dupuis. It analyzes the following four matters raised in Constable Dunlop's will-state:

1. Richard Abell indicated that there was a cover-up.
2. Father Charles MacDonald was getting nervous about being arrested and handcuffed.
3. Dunlop found it suspicious that the Silmsner complaint was entered on a project file rather than on the Ontario Municipal and Provincial Police Automation Cooperative.
4. The OPP had illegally seized videotapes from Mr. Leroux's residence.

For each of these points, Detective Inspector Hall provides some commentary, some of which stems from the investigative materials and some of which appear to be his opinion.

Again, I find this document troubling for a number of reasons.

First of all, it is unclear to me why these four particular issues were selected for analysis. These are not key events or facts that are essential to the claim of a conspiracy, nor are they the most important elements of Constable Dunlop's conspiracy theory. There is no coherent link between these four issues.

Second, some of the analysis in this document is inaccurate. For example, after setting out Constable Dunlop's allegation that Richard Abell says that there was a cover-up, the document states that during his interview with the OPP, Mr. Abell "adamantly denies ever saying there was a cover-up" and that "he does not believe there was a cover-up. However, Mr. Abell actually said in his statement that while he did not recall saying that there had been a cover-up, he believed that the effect of the settlement was to cover up the allegations against Father MacDonald.

The document also states that Constable Dunlop's allegation about the illegal seizure of the videotapes is "totally false." As discussed elsewhere in this chapter, the OPP would have discovered that pornographic videotapes were indeed seized during a firearms search at Mr. Leroux's home. However, rather than addressing

what this investigation revealed about the real issue underlying the tapes, i.e., whether or not they contained evidence of sexual abuse, the document simply sets out the fact that that Mr. Leroux gave contradictory stories about the tapes.

Finally, the document goes into some detail about the allegation that the David Silmsner complaint was put on a project file and concludes that the file was not used “for an illegal purpose.” I think this mischaracterizes Constable Dunlop’s allegation; he did not allege that the use of the project file was illegal. Detective Inspector Hall testified that he did not find it problematic that the case was entered as a project file. He says, “I don’t think it would be unusual, it’s the nature of the investigation. Here you’ve got allegations against a priest and a probation officer.” The document does not draw the Crown’s attention to the fact that a number of the officers interviewed indicated that entering the information on a project file was unusual for cases of sexual assault.

Comments on Summary Documents

Although I recognize and accept the officers’ testimony that the substantive results of the investigation are contained in the statements taken by the officers and the evidence collected by them, I do think that it is important that the summary materials provided by officers must be accurate and well-prepared, particularly given the volume of materials contained in the Crown brief. The summary documents should provide the Crown with a clear understanding of the nature and scope of the allegations under investigation, and should highlight key issues for the Crown to consider.

I would recommend that when asking the Crown for an opinion on a large and complex brief, the police should point out particular areas in which they would like to have the Crown’s opinion. For example, they might request a fresh look at the evidence or ask for the Crown’s views on what charges should be laid. Of course, the Crown must also exercise discretion to address issues that the police do not specifically draw to his or her attention.

Awaiting an Opinion on the Brief

The Crown brief was submitted on July 20, 2000, but an opinion was not issued until over a year later, on August 15, 2001. The OPP was also waiting for an opinion to be rendered on five other Crown briefs that had been submitted to the Crown in fall 1999. This delay is discussed in detail in Chapter 11.

All of these briefs were initially provided to Crown Shelley Hallett. Detective Inspector Hall testified that Ms Hallett told him that she wanted to review the conspiracy brief before she rendered an opinion on these five other investigations. All of these briefs involved complaints made by Mr. Leroux, while one

of them contained an additional complaint from C-15. Detective Inspector Hall testified that it made sense for Ms Hallett to review these briefs together because Mr. Leroux was a common element in all of them.

As discussed in the previous section of this chapter, in the fall of 2000 and the winter of 2001 the OPP was facing considerable public pressure to declare an end to the investigation. Detective Inspector Hall also testified that he wanted to conclude the investigation in fairness to those who had been accused of abuse.

Crown Hallett had initially told Detective Inspector Hall that she would have the briefs reviewed by the end of October 2000. When this did not happen, he spoke to both her superior and his own and expressed his concerns.

Detective Superintendent Chris Lewis raised the issue with senior Crown officials in the winter of 2000–2001. He was told by Murray Segal that Ms Hallett was about to start a trial and he was reluctant to speak to her about it. Mr. Segal testified that he did not consider reassigning the briefs at that time.

After the stay of proceedings in the Jacques Leduc matter, Detective Inspector Hall sent the following e-mail to Detective Superintendent Jim Miller on April 16, 2001:

MATTERS WE ARE WAITING FOR LEGAL OPINIONS ON—
Five clergy and conspiracy. HALLETT had promised on numerous occasions she would have them for us. We are being held hostage by the CROWN'S office. I have spoken to Reg. Crown Jim STEWART about it. Chris LEWIS has also spoken to him and Murray SEGAL. The Mayor of Cornwall, the Chair of the Police Services Board, The Chief of C.P.S., Crown Attorney Murray MACDONALD and Lawyers for the Bishop have all contacted me as to when our investigation will be concluded. Since HALLETT has been removed from Project Truth case Jim STEWART is in the process of getting three crowns together to review these cases. I would expect this to take place in the next couple of weeks.

After receiving this e-mail from Detective Inspector Hall, Detective Superintendent Miller e-mailed Murray Segal on May 22, 2001, that he was “very concerned with the time frame involved here.” He asked when the OPP could expect “some feed back on the opinions that Det. Inspector Pat Hall has asked for.”

Detective Superintendent Miller was informed the following day that the opinions had been reassigned to Crown Lorne McConnery who would be reviewing the materials “on a priority basis.”

I find that Detective Inspector Hall took appropriate action in this case by raising the issue with his superiors once it became evident that he could not

resolve it directly with Crown Hallett. In turn, his superiors attempted to deal with Ms Hallett's superior. This said, once it became clear that the Crown was not going to render an opinion within an acceptable time frame, the OPP needed to reconsider its options.

Both Detective Inspector Hall and Detective Constable Dupuis testified that they did not have a subjective belief that there were reasonable and probable grounds to lay a charge in the conspiracy investigation. Detective Inspector Hall said that he was not likely to lay charges unless Ms Hallett saw something that he did not see. It is my view that rather than being paralyzed by the Crown's inaction, they needed to make their own decision about whether or not to lay charges. Given that the police had no reasonable and probable grounds, it is highly unlikely that the review of the briefs would have led to a recommendation for charges, and thus the OPP should have considered concluding its work and announcing an end to the investigation in the absence of a Crown opinion.

The Winding Down of Project Truth

The officers submitted their Crown brief on the conspiracy investigation on July 20, 2000. This date marks the end, in my view, of the investigative stage of Project Truth. Just prior to the submission of the brief, on July 18, 2000, Detective Constable Genier went through the case manager assignment book and closed off a number of outstanding assignments by entering the following under the heading "Action Taken":

Above was previously spoken to in original Father MacDonald brief or is mentioned in Perry Dunlop's binders as a person related to persons aware of abuse. Considering time lapse and opportunity to report abuse since original brief, above will not be interviewed. Detective Constable Genier.³⁷

At the hearing, Detective Inspector Hall explained the rationale behind the decision not to contact these individuals:

These people didn't contact us. These were names we derived from a list. And I believe Detective Constable Seguin acquired a list of potential altar boys, the people that we thought were altar boys at one time.

37. The assignments were largely identified by the name of the person to be spoken to. As such, "above" refers to each of the people identified in the assignment.

... So we made a decision that we weren't going to go out and start soliciting complaints, so to speak; that if somebody had a complaint they would either call us or call somebody, maybe even Mr. Dunlop, to bring it forward. That's mainly why these weren't addressed.

And we had been going from '97 at this point so they had, you know, a few years to think about it.

...

[I]t would have took considerable time to go, like I say, knocking on doors and soliciting. Some of them we didn't even know where they were. Some of them had moved out west. Some of them were deceased. I mean, if I had a big team of investigators and we wanted to contact every person that's name came to us to determine why it was in the material; sure.

Detective Inspector Hall testified that as of July 18, 2000, the "active investigation" was "pretty well" on hold. However, he noted that the Project Truth officers would have been available through their local detachments to investigate complaints that came in after this date.

Detective Inspector Hall testified that he was under pressure from the local detachments to end the investigation, and this factored into his decision:

I was constantly being asked to—when the investigators would be returned to their detachment—Inspector Hawkins; I had several conversations with him about, "When can we get the men back? When can we get the men back?" So as a responsible supervisor and management of resources I made a decision, we weren't going to go any further unless they came to us.

Follow-Up With the Crown

Detective Inspector Hall met with Crowns Lorne McConnery and Kevin Phillips several times to go over the brief to ensure that they understood the nature of the allegations and the information provided by the investigating officers.

Crown Opinion and Press Release

On August 15, 2001, Lorne McConnery rendered an opinion recommending that no charges be laid. The opinion letter to Detective Inspector Hall stated:

The laying of criminal charges by an officer is predicated upon his or her being satisfied both objectively and subjectively that there is credible evidence of all of the essential elements of the offence investigated respecting all parties against whom the charges are alleged. The officer in swearing the information must state under oath that he or she believes that the evidence is sufficiently strong to give rise to reasonable and probable grounds. The objective and subjective aspects of the test of reasonable and probable grounds must be satisfied before any criminal charges are laid.

I understand from several discussions with yourself, and with Detective Constables Joe Dupuis and Don Genier and information from Detective Constable Steve Seguin that the investigating officers are not personally satisfied that reasonable and probable grounds exist to lay charges in the six briefs provided to me. Absent such subjective belief that the grounds exist, criminal charges cannot be laid.

Upon our review of all the above-noted material, I find that your concerns and conclusions about the lack of reasonable and probable grounds are appropriate and justified. All of the allegations of the complainants Leroux and [C-15] have been carefully studied in the context in which those allegations were made, and your opinion as to the credibility of the allegations is reasonable and well founded in my view.

The OPP issued a press release announcing the conclusion of Project Truth on August 22, 2001. The press release said, in part:

... Legal opinions were sought from Crown Law Office Criminal concerning a number of remaining matters, and as a result, investigators have determined that there is not sufficient evidence to lay additional criminal charges in this investigation.

...

The OPP found no evidence that a pedophile ring operated in the city. There is nothing to indicate individuals operated in concert with each other to commit offences.

...

[A]llegations of a criminal conspiracy involving a cover up were also thoroughly investigated. No evidence of any such criminal wrong doing was discovered.

Mr. McConnery testified that he had an issue with the comment made in the press release that the OPP had found no evidence of a pedophile ring:

I was never asked for an opinion on that. I don't know if it would have been a proper question to ever put to me because I don't—we don't give opinions on things like that. We are asked was there evidence to support this criminal charge.

And so the thrust of this press release seemed to me to be saying this has all been subjected to Crown review, i.e., Lorne McConnery, without naming me, and he too has found that there is no paedophile ring in the City of Cornwall.

I share Mr. McConnery's criticism of the OPP's August 22 press release. His opinion was restricted to determining whether, based on the material provided to him, there was a basis to support a charge of criminal conspiracy. He was not asked for his opinion on the broader question of the existence of a pedophile ring. I discuss this broader question in the linkages section below.

Investigation of Linkages Among Alleged Perpetrators

As mentioned in the previous section of this chapter, there were numerous reasons why many members of the public were not satisfied with the work of Project Truth and with its final press release announcing that there was no "pedophile ring" operating in the Cornwall area. Even before Project Truth's final announcement, thousands of people signed petitions asking for an inquiry into the allegations of sexual abuse in Cornwall.

Defining a "Ring"

The difficulty with tasking the Ontario Provincial Police (OPP) to investigate a pedophile ring is, such a ring is not easily defined at law. It is not a crime to be a "member" of a group of pedophiles; it is only a crime to commit acts of abuse, to assist others in doing so, to assist an abuser in avoiding criminal charges after the fact, or to conspire to commit abuse.

Because there is no legal definition of a pedophile ring, the concept could mean different things to different people. It could be:

- a group of people who committed acts of abuse together;
- a group of people who actively assisted one another in committing acts of abuse, either through passing young people between them, or by covering up one another's actions; or

- a group of people who were passively aware that the others were committing acts of abuse and did nothing to stop it.

Some people would define a “ring” as a group of people who all know one another, while others would say that a ring could exist even if some of the people involved know some but not all of the others.

Given the information that it had, it is difficult to say whether the OPP should have declared that it had found some evidence of a “pedophile ring.”

On one hand, such a declaration would have answered the rumours that were widespread in the community at that time. As discussed further in this section, it was well known that there were connections between some of the alleged perpetrators and that there was some evidence that certain alleged victims had been passed between abusers.

On the other hand, this terminology creates a great deal of stigma for the individuals labelled as members of a ring, for the institutions that employed these people, for innocent associates of the accused, and for the police forces that failed to find the ring sooner. A declaration by the OPP may have added to the widespread panic in the community rather than resolving the public’s fears. Both of these factors could have been exacerbated if, after laying charges, the justice system could not secure convictions for many of the accused.

I question whether the OPP considered the matter strategically, or whether its outright denial of the existence of a ring was based on the very strict definition relied upon by the officer in charge of Project Truth at its completion. Detective Inspector Pat Hall testified that in his mind, a ring consisted of a group of people who all knew one another and were all working together. He would not consider a group of abusers who introduced children to other abusers to be a ring unless the last person in the chain knew the first. It was for this reason that he could not say there was a ring in the Claude Marleau case; only some, but not all, of the alleged perpetrators knew one another.

In addition, Detective Inspector Hall testified that in order to establish a ring, the suspects would first have to be convicted for sexual abuse:

... I would have preferred to have some convictions on the allegations we had so that I could say that the victim is a true victim. Secondly, that the suspect is now a charged person and then I would determine what linkages there were between the individuals and I would go somewhere.

...

... [Y]ou can’t say there’s a pedophile ring until you’ve got convictions. And you can’t get convictions until you have alleged victims giving you the information.

I find this logic overly restrictive and even circular. It does not make sense to wait for convictions to begin looking for a ring—the linkages themselves could have led to convictions on abuse-related charges, conspiracy charges, or accessory charges, and this information could have been useful during investigations, trials, and sentencing.

It is unclear to me whether senior OPP officials were aware that Detective Inspector Hall had such a narrow view, or whether they simply adopted his determination that Project Truth had found no evidence of a ring. Detective Superintendent Chris Lewis testified that Detective Inspector Hall did not tell him that he needed at least two convictions to say that there was a ring. Detective Superintendent Lewis testified:

I hadn't thought specifically at that time what that might mean, that kind of that—the word “ring” was used, et cetera, but I certainly would consider more than just knowing one another and having common victims ... as being an organized ring.

Throughout this Inquiry I have heard evidence that suggested that there were cases of joint abuse, passing of alleged victims, and possibly passive knowledge of abuse. I want to be very clear that I am not going to make a pronouncement on whether a ring existed or not; it is not within my mandate to say what would have come from this information had it been explored more fully.

What I am saying is that there is good reason why certain members of the public were less than satisfied with the OPP's unequivocal position about the non-existence of a ring. I would note that much of what I have heard about linkages remain allegations that have not been proven beyond a reasonable doubt. Nonetheless, these allegations merited an in-depth review and investigation to determine if there was any significance to the linkages and to lay charges where appropriate.

Allegations of Joint Abuse

I have, for example, heard evidence that individuals acting together may have jointly abused some individuals. Claude Marleau, for example, alleged that more than one person was present in some of the instances when he was abused. Although Father Paul Lapierre was convicted in Quebec for one of these incidents, his alleged co-abuser was acquitted. In the other instance, the alleged co-abuser was dead, so it cannot be said that the OPP would have been able to obtain a conviction for joint abuse.

C-21 alleged that he attended events at Jean Luc Leblanc's cottage where a number of adults were abusing children together. The OPP did not investigate these allegations, as they occurred in Quebec, but passed them on to the local Quebec

police. However, Mr. Leblanc was charged and convicted for other instances when he abused C-21.

Allegations of Passing of Victims and Overt or Implicit Knowledge

There have also been numerous allegations of young people being passed from one abuser to another. In some cases, it was clear that the alleged abusers knew about each other's criminal proclivities; in others, a case for such knowledge would be based on circumstantial evidence about the close ties that the two alleged perpetrators shared. Some of these alleged perpetrators worked together, some were friends, and some were connected through the probations and criminal justice system.

Some examples of this linkage are the five people who testified about one of their alleged abusers knowing of the others' criminal proclivities. Mr. Marleau claimed that he had been passed from Roch Landry to Father Paul Lapierre, and that Father Lapierre introduced him to a number of his other alleged abusers.

Keith Ouellette alleged that after his probation officer, Ken Seguin, abused him, Mr. Seguin sent him to Manpower to see Richard Hickerson, who also allegedly abused him. C-5 claimed that Mr. Seguin introduced him to Malcolm MacDonald, and that he was abused by both men. Robert Renshaw also alleged that Mr. Seguin introduced him to another alleged abuser, Father Charles MacDonald. David Silmsen testified that Mr. Seguin told him "that he knew about Charles MacDonald sexually abusing" him, then clarified that Mr. Seguin may not have used those words. Upon further questioning about the words Mr. Seguin used, Mr. Silmsen responded, "he knew what Charles MacDonald was doing, type of thing."

Allegations of Passive Awareness of Abuse

There were also situations in which alleged victims were abused by two people with connections to one another, although they did not claim that they had been passed on from one abuser to another.

To give just a few examples, Albert Roy alleged that after he told Mr. Seguin that Nelson Barque had abused him, Mr. Seguin abused him as well. Robert Sheets claimed that he told his probation officer, Mr. Barque, that Mr. Hickerson had abused him, and after that, Mr. Barque abused him. C-8 testified that he told Ron Leroux that he was being abused by Marcel Lalonde, and then Mr. Leroux abused him as well. David Silmsen claimed during his testimony that he was abused by three people on different occasions: Father MacDonald, Marcel Lalonde, and Ken Seguin.

This abuse may have been the result of an organized group of individuals, or it could have been an unfortunate coincidence that the alleged victim was abused

by two people who had connections with one another. This coincidence may have arisen from the fact that a number of alleged abusers had ties to a particular institution or system, such as the Diocese or the youth criminal justice system. Dr. Peter Jaffe, an expert in child sexual abuse, testified that abusers tend to associate themselves with particular institutions that give them ready access to children.

The Problems With the OPP's Investigation

I heard conflicting testimony about whether Project Truth was actually looking for an organized group of pedophiles or evidence that individual perpetrators were working together to either pass young people around or hide their abuse of them.

In response to a question about whether Project Truth was investigating a clan or ring of pedophiles, Detective Inspector Tim Smith testified, "I would say rather than a ring, I would say a group of organized paedophiles. Yes, that will be part of our mandate." He added:

[M]ainly the ones that were named here in, you know, the first paragraph of our mandate. Were they organized? Were they a group that—were they a group of paedophiles? Now, that's what we're looking at. And they were investigated individually to see where they all tied together was another facet of the investigation.

Detective Inspector Hall also acknowledged that they were looking into the connections between individuals and whether suspects were working in concert in some way to abuse children.

However, Detective Constable Steve Seguin testified:

I don't think we were really investigating the clan. I mean that's one of the allegations that there was a clan. I think that's all part of investigating the people involved, the allegations made against the different people. A determination as to whether or not there was a clan of paedophiles, I guess, would be made once everything was obtained, all the information and then scrutinized.

Although I am of the view that the OPP investigated Ron Leroux's specific allegation about a "clan of pedophiles," I find that the OPP did not conduct a full-scale investigation into the linkages between victims and perpetrators in a manner that went beyond Mr. Leroux's allegations.

Even if Project Truth was looking at linkages in a broader sense, it did not, in my view, employ an approach that would have allowed it to do so properly.

Part of the difficulty was a lack of resources. Detective Inspectors Smith and Hall initially hoped to obtain funding for a crime analyst who would assist them in looking at the relationships between the victims and suspects. Detective Inspector Hall made some informal inquiries and was told that funding was not available. He testified:

I didn't make a formal request because I knew resources were tight. I knew that our analysts in Orillia probably wouldn't be available for something like this because they basically work on organized crime and high-profile investigations with a significant number of officers and whatnot, like major frauds, that sort of thing.

Without a crime analyst, the Project Truth officers were left to do the linkage work themselves. Detective Inspector Hall had some training in linkage analysis, and he did this work in conjunction with the other officers. He admitted that the linkage work was time-consuming and that a crime analyst would have helped them do this work more quickly.

Deputy Commissioner Chris Lewis testified that the OPP has more crime analysts today than in 1997:

[K]nowing what we know in results with what happened with [Detective Inspector] Pat [Hall] in terms of his needs for an analyst and the years of work that goes into something like that that involves abuse, ultimately children and male victims, et cetera, I'm certain he would find an analyst somewhere for that project. We just—it's just something we have to do.

The ACCESS program was used for some of the linkage work; it could be used to generate an Association Report that tracked whether there was a relationship between two people. However, this document gave very little information about the nature of the connection between the two people, and it was not helpful to assess the connections between many individuals at once.

It was expected that linkages would become evident as the Project Truth officers discussed their individual investigations with each other. Detective Constable Seguin testified that the officers were expected to know a great deal about the other files: "We spoke daily about what each other was doing and the different connections between the different players." However, he also testified that no one was assigned to plot the linkages on a chart or to do work of that nature. He added that the person with the most knowledge about the investigation and who would be expected to put all the pieces together was Detective Inspector Hall.

I find it difficult to see how the officers could have developed a comprehensive understanding of the connections between so many people with such an informal system. It is my view that Project Truth did not make a serious effort to understand the linkages between the various individuals involved in this case.

In addition, Detective Constable Seguin testified that Project Truth did not investigate allegations against deceased perpetrators because such an investigation would not lead to charges. Given that a number of persons of interest were deceased, that many of them worked together or had other connections and that these people were not thoroughly investigated, these individuals could have been missing links in any analysis that attempted to piece together the connections between individuals.

As a result, the OPP failed to explore the links between people and use them to obtain more information for its investigation.

Using Information About Linkages

I also find that the officers did not think creatively about how the links between individuals could have assisted in the investigations and prosecutions related to Project Truth.

First of all, by understanding the connections between people, the officers would have been able to obtain information that could have assisted in their investigations into individual allegations of sexual abuse.

Second, understanding the linkages between people could have assisted in building a case for conspiracy or accessory charges in addition to charges for sexual abuse. In cases where the OPP did not have direct evidence that an alleged abuser intentionally passed a young person over to another person to be abused, evidence about a strong connection between people, including evidence of possible knowledge of the alleged abuser's illicit activities, could have provided circumstantial evidence for conspiracy or accessory charges.

Third, in cases where the officers discovered that a number of suspects were employed by or involved with a particular institution or organization, they could have used this information to reach out to the organization in an attempt to identify other potential victims. For example, given that there were allegations that a number of people in the probations system were abused, the OPP could have approached the Ministry of Community Safety and Correctional Services to obtain the names of other probationers who had contact with the alleged abusers at the relevant time. Likewise, more could have been done with the Diocese given the number of former altar boys who were victims or alleged victims.

The OPP would have been well advised to inform these institutions that there was a problem. It appears that certain officials at the Ministry of Community Safety and Correctional Services were informed about the scope of the problem

in the probation office only after obtaining information from one of the Project Truth websites. It is my view that the OPP needs to develop protocols to share information about criminal investigations in order to assist public institutions in identifying systemic problems and confirming that there are no current victims.

Fourth, information about linkages could be helpful during the trial process. As is discussed in Chapter 11, “Institutional Response of the Ministry of the Attorney General,” Crown Alain Godin attempted to use links between the alleged perpetrators to demonstrate that Claude Marleau did not consent to sexual acts and that he was abused. Evidence that an alleged abuser participated in passing young people around could also be useful in the court process to impose an appropriate sentence on the accused.

Conclusion

In examining the institutional response of the Ontario Provincial Police (OPP) and its officers, I had the opportunity to review a great deal of documentary evidence and to hear testimony from a number of officers. Throughout this chapter I have made some conclusions about specific issues and I will not repeat all of these conclusions here. I would instead like to comment on some of the general themes that have become apparent as a result of my examination of the OPP’s institutional response.

This Inquiry was called, in part, to respond to rumours and innuendo in the community about events such as the seizure and destruction of tapes found at Ron Leroux’s residence, Ken Seguin’s death, and the settlement between David Silmser and the Diocese of Alexandria-Cornwall, all of which fuelled questions about whether there was an organized group of pedophiles operating in Cornwall. It was also called as a result of public dissatisfaction with the Project Truth investigations.

This chapter has not been able to provide definitive answers to all these matters, and the truth behind some of them may never be known. It is my hope, however, that I have been able to shed some light onto the facts surrounding these events and that I have been able to explain why the OPP’s various investigations were not able to provide a satisfactory answer to these questions at the time.

I further note that had the OPP avoided some of the mistakes in some of its earlier investigations, these matters may well have been resolved and the later rumours would not have found such fertile ground in which to grow. In particular, I am disappointed with the quality of the OPP’s 1994 re-investigation of the events surrounding the Silmser settlement as well as its re-investigation of Mr. Silmser’s allegations against Father Charles MacDonald.

The OPP was called in to investigate these matters after the Ottawa Police Service identified some serious deficiencies in the Cornwall Police Service's investigation of Father MacDonald. Given these problems and the considerable controversy surrounding the issue, it was of paramount importance for the OPP to conduct a complete and thorough re-investigation, which unfortunately, it did not. It was equally important for the OPP to properly investigate the very serious allegations of conspiracy and obstruction of justice that were undermining the community's trust in public institutions. The flaws in this investigation stemmed in part from assumptions made by the investigators and in part from the investigators' failure to interview certain people with relevant information and to obtain documentary evidence from the lawyers involved in the settlement. The OPP was called in to resolve the controversy, but instead its incomplete investigation allowed the rumours to grow and later allowed the force to become a target of the public's mistrust.

In this chapter, I examined a number of investigations into allegations of sexual abuse of young people. The Project Truth investigation was examined in detail at the hearings. Five of the six officers who worked on the investigation were called as witnesses. The sixth was unable to testify due to illness, but in his case I had the benefit of his police notes and the testimony of others regarding his role. It is clear from the evidence, both documentary and testimonial, that these officers did a tremendous amount of work during the course of the project. The majority of them worked for more than three years on the investigation, but some remained working, albeit on a part-time basis, for several more years.

I have no hesitation in concluding that these officers were all dedicated and hard-working. In agreeing to participate in this special project, they made sacrifices such as forgoing overtime pay and postponing retirement. I trust these efforts have been recognized by the OPP in some way.

The Project Truth investigation involved an enormous amount of work. Hundreds of individuals were interviewed, including dozens of victims and alleged victims, many perpetrators and alleged perpetrators, and hundreds of witnesses. Approximately thirty Crown briefs were prepared and dozens of charges were laid by Project Truth officers. Charges were also laid by other police services based on referrals from Project Truth officers.

Only one person arrested by Project Truth was convicted and from the public's perspective, this made Project Truth a failure, particularly given the number of complainants and suspects that the project dealt with. Although the justice system does not measure success in terms of the number of convictions, I am troubled by the relatively small number of these cases that were brought to a full trial on the merits.

Some of the underlying problems that plagued Project Truth are common in investigations of historical sexual abuse, and lessons can be learned from the Project Truth experience.

Victims' and witnesses' memories fade, and investigators need to know how to help victims in particular situate events in time. Had the officers done this with Claude Marleau, for example, perhaps some of the difficulties in the prosecutions related to his allegations could have been avoided. Consent can be a complicated issue in cases where the victim has been groomed to participate in abuse, and officers need to understand this so that they can obtain evidence to demonstrate whether consent may have been vitiated.

In addition, victims can be fragile, and some, such as C-66, have such difficulty dealing with the justice system that they eventually withdraw their complaints. Other victims, especially those who have been abused by people in positions of trust and authority, may have difficulty dealing with authority figures such as police and Crown prosecutors and may express their mistrust through anger and hostility. These problems can be compounded if complainants are not given accurate and timely responses to their questions or are forced to speak to the police or the Crown only through their own lawyer. Steps must be taken to put complainants at ease and assist them in bringing their allegations forward.

Further, historical allegations can be incredibly labour-intensive. Witnesses and even alleged perpetrators may no longer live in the area and may be deceased or difficult to find. Institutional records must be tracked down to help corroborate allegations and situate events in time.

Notwithstanding the passage of time since the event, allegations must be acted upon in a timely manner. Suspects may be of an advanced age and at risk of dying before the trial process is complete. Victims can become fatigued by a drawn-out investigation and may withdraw their participation. Most importantly, these allegations should be acted on quickly because suspects of historical abuse may still be in contact with children and may be continuing to perpetrate abuse, as was the case with Jean Luc Leblanc. Even in historical cases, early contact between the police and the Children's Aid Society and joint investigation can be useful.

Fortunately, I also heard expert evidence about some of the solutions to these problems. The proper training and retraining of officers is of paramount importance. In particular, this training should address the challenges of dealing with victims of male-on-male abuse and those inherent in historical cases. Assistance to victims is also essential, both in dealing with the justice system and in coping with their experiences of abuse. Finally, it cannot be overemphasized that these investigations need to have adequate resources.

In light of the expert contextual evidence I heard about the under-reporting of child sexual abuse, it is not surprising that once Project Truth was put in place to investigate historical sexual abuse, victims not identified in the Fantino Brief found the courage to come forward. It is apparent that the significant increase in the number of alleged victims and perpetrators was not anticipated by Detective Inspector Smith or others in the planning stages of Project Truth. An investigation that was anticipated to last no more than one year soon stretched to over three years.

I have no doubt that some of the deficiencies I have noted throughout this chapter could have been mitigated if senior OPP officials had recognized the full extent of the allegations of abuse in the community and responded by providing additional resources. A quick response requires knowledge that comes from communication between the case manager and OPP Headquarters. The case manager should have emphasized the increased number of the allegations to be investigated in the early stages of the special project in the fall of 1997. Unfortunately, interim reports setting out the nature and extent of the investigation were not sent until the summer of 2000, at which time most of the investigative work was completed.

Additional resources in the form of extra officers, a crime analyst, and administrative support (including bilingual staff) all would have assisted the Project Truth investigation in following up on additional leads and allowing more time for linkage and other intelligence work. It would also have allowed time for training, in addition to the on-the-job training Project Truth officers received. This could have been particularly helpful to the junior officers, given their lack of training and experience in these types of investigations.

A further resource in the form of a dedicated Crown attorney or team of Crown attorneys would have been immensely helpful to the project. Former Project Truth case manager Detective Inspector Pat Hall pointed out the challenges in dealing with numerous Crowns and recommended that in the future, special projects be assigned a dedicated Crown.

The OPP also faced an unusual combination of challenges during Project Truth. The officers had to deal with unfriendly media, a largely untrusting public, and a vocal group of community activists who relied on questionable evidence and spread rumours through websites, through an outspoken MPP, and through the media. In addition, the officers faced the unique challenge of investigating allegations brought to light by Constable Perry Dunlop during an off-duty and unauthorized investigation that suffered from many deficiencies including poor note-taking, inappropriate interview techniques, and undue, although unintentional, influence of victims and witnesses. In addition, the Project Truth officers

had the difficult task of obtaining the disclosure of materials from Mr. Dunlop, who was distrustful and less than forthcoming, although in part this was due to his prior mistreatment by the Cornwall Police Service (CPS) and legal advice that he received.

Although these factors were quite unusual, I have explained that the OPP failed to put a strategy in place to deal with the media, to inform the community and dispel rumours, and to track and manage Perry Dunlop's exposure to their cases once it became evident that they were unable to obtain his cooperation.

A further unique difficulty was the OPP's inability to openly share information with the CPS and the local Crown Attorney's Office, because both of them were being investigated for their roles in the Silmser settlement. The OPP failed to develop a strategy to overcome any actual or perceived conflict of interest and share information where necessary. The result was that information was unnecessarily withheld from the CPS, either deliberately, in the case of C-10's statement, or inadvertently, as was the case with the disclosure in the Marcel Lalonde prosecution. The barrier between the Crown Attorney's Office and Project Truth contributed to the difficulties in having Crowns assigned to these cases.

The Project Truth officers did not have an easy task. Having said this, I have outlined in several sections of this chapter when and how their institutional response could be improved. In several instances, I have set out recommendations for the future.

Deputy Commissioner Lewis testified about a number of advancements that have been made since Project Truth finished a few years ago. He talked about increased training and the resulting number of officers with full training in sexual assault investigations throughout the province. He also talked about other improvements that have resulted from the adequacy standards including enhanced major case management, sexual abuse coordinators at the regional and detachment level, new initiatives with media training and communications.

I agree with him that the OPP of the present is not the same as the OPP of the 1990s. I would also note, however, that several improvements had been made in the years before Project Truth began and thus should have been utilized throughout its duration. Unfortunately, despite using abuse coordinators and a coordinated media approach in Project Jericho a few years before Project Truth, this approach was not followed in Project Truth. Fully trained and experienced sexual assault investigators could have been assigned but were not. The fact that more resources are available does not ensure they are used efficiently and thus I have tried to recommend instances where additional resources should be requested.

I agree with a number of the recommendations proposed by Deputy Commissioner Lewis in his helpful recommendations to the Inquiry. He echoed the words of many others in calling for a return to joint training with CAS officers. I agree

with him that this needs to occur. I also agree with his recommendation that present training programs should be reviewed at the Ontario Police College and the OPP Academy in respect to sexual assault investigations and in particular that programs or modules be developed to address the investigation of historical sexual assaults, the understanding of and responding to male victimization, and the investigation of sexual offences against children.

Much has been done and further improvements are required to ensure that the OPP and other police forces are better able to respond to the needs of victims of child sexual abuse, whether it is a historical report of abuse or not. I hope that in future special projects, many of the recommendations I have made in this Report will assist the OPP with the difficult and important service it provides to all the people of the Province of Ontario.

Recommendations

Protocol for Special Projects

1. The Ontario Provincial Police (OPP) should develop and implement a protocol for special project investigations involving sexual assault/abuse cases.³⁸ This protocol should set out, among other things:
 - the need for a clear mandate of the special project;
 - the special projects mandate communicated to all [regional] OPP officers. For example, information regarding a special project in Eastern Ontario should be sent to local detachments and posted in full view with a contact number to call if there are questions or a need for further information;
 - the need for a dedicated Crown attorney(s);
 - a media strategy developed at the outset of any investigation;
 - a clearly defined reporting structure;
 - timely and frequent communications with OPP Headquarters to ensure appropriate resourcing; and
 - a formal strategy for collaboration with other relevant agencies including other police forces, child protection services, school boards, and the Crown, which defines the roles and responsibilities of participants.

Priority of Sexual Assault/Abuse Cases

2. The OPP must ensure that historical sexual assault/abuse cases are accorded high priority and are treated with the same urgency as recent sexual assault/abuse cases. Appropriate measures must be taken to ensure that such investigations are conducted in an expeditious manner.

Training

3. Training and refresher courses should continue to be provided to OPP officers involved in sexual assault/abuse investigations. This should include training on both current and historical abuse investigations. It should also include information that will assist

38. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

- officers in understanding sexual abuse victims, including the “grooming” of victims of sexual abuse and issues particular to victims of historical sexual abuse and male-on-male sexual abuse, as well as in interviewing individuals suspected of sexual abuse.
4. Regular refresher courses on sexual assault/abuse, including child sexual assault/abuse, historical sexual assault/abuse, and male-on-male sexual assault/abuse, should be provided to all officers involved in investigating sexual assault/abuse cases. In addition, officers who are starting these types of investigations should receive or continue to receive in-service mentorship. If not already in place, a procedure should be established to ensure that OPP officers investigating lawyers as suspects have specialized training and knowledge, or are able to consult with someone who does, such as a Crown attorney in the Special Prosecutions Unit.
 5. It is important that officers in the OPP receive ongoing training regarding their statutory reporting duties to the Children’s Aid Society (CAS) under the *Child and Family Services Act* to ensure that children at risk are protected.

Interviewing Sexual Assault/Abuse Complainants

6. Although it is sometimes necessary because complainants will disclose the full extent of their abuse only over time, taking multiple statements from a complainant should be avoided where possible.
7. The OPP and the CAS should jointly conduct interviews with child complainants to minimize the number of interviews.
8. All efforts should be made to ensure that interviews with complainants of sexual assault/abuse take place in a comfortable setting, for example, a neutral location rather than an interrogation room. Whenever possible, these interviews should be done in person, not by telephone.
9. Investigative protocols should require officers to help complainants to develop a plan to best recount their version of past events, including dates. Officers may suggest using certain techniques, such as collecting documents and photographs and/or creating a timeline. OPP officers should be involved in obtaining these documents. In some circumstances, search warrants may be required.
10. Complainants should be offered the opportunity to be interviewed in the language of their choice. To ensure this choice is the complainant’s, the interviewing officer should not state his or

her preference. If the complainant has difficulty expressing him or herself in English or French, every effort should be made to provide accommodation by way of interpreters or otherwise.

11. It is important that the OPP develop a protocol to ensure that complainants of sexual assault/abuse make their disclosures to and are interviewed by officers of the sex of their choice. This will ensure that the trauma of the complainant is reduced and enhance his or her ability to provide intimate and personal details of the sexual assault/abuse alleged.

Communication With Complainants

12. The OPP should institute or augment measures to ensure that victims and alleged victims of sexual assault/abuse and, in the case of children who are sexual abuse victims or alleged victims, their parents and family members, are offered support and apprised of the investigation, the laying of charges, and the court proceedings. This could be done by the OPP directly, through the Victim/Witness Assistance Program (VWAP) or by a liaison person as described in the recommendations in Phase 2 of this Report.
13. It is important that the OPP officers inform victims and alleged victims of sexual assault/abuse of the outcome of any proceedings against the perpetrator and the sentence imposed by the court. This could be done by the OPP directly or through a liaison person as described in the recommendations in Phase 2 of this Report.

Counselling and Support Services

14. OPP officers should continue to augment their knowledge of counselling and support services available for victims and alleged victims of sexual assault/abuse, for male-on-male sexual assault/abuse, and for their families. Police officers should always attempt to make referrals to these services when they receive a complaint of sexual assault/abuse.

Consultation in Historical Sexual Abuse Cases

15. Given the particular complexities and sensitivities that arise in historical sexual abuse cases, case managers (for major cases) should consult with the Regional or Detachment Sexual Abuse Coordinator early in the planning phases of such investigations and include these officers as part of the investigative team.

Note Taking, Record Keeping, and Accessing Records

16. It is critical that OPP officers maintain detailed documentation of their investigative work as well as of meetings attended.
17. It is critical that OPP officers record and insert their notes from investigations into the Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) and other electronic databases to ensure that other police officers have access to information about the alleged perpetrator(s) of sexual assault/abuse.
18. It is important that OPP officers involved in sexual assault/abuse investigations regularly access OMPPAC and other electronic databases such as the Canadian Police Information Centre (CPIC) to determine whether other officers in their police force or other police forces have information on the alleged perpetrator(s).
19. The OPP should take appropriate measures to ensure that its policy on the retention of officers' notes is clearly defined, well understood, and strictly enforced. The policy should continue to stipulate that the officers' notes are the property of the OPP and that should the officer retire or go on extended leave, his or her notes need to be turned over to the force. Such a policy must also address an efficient way to store these records so they can be searched and accessed whenever necessary.
20. The OPP should take steps to develop policies and protocols for the destruction of property. These policies and protocols should require that property reports clearly indicate who disposed of the property. As well, quit claim forms should require a witness signature; at least two people should be present for the complete destruction of property; time, date, and method of destruction should be recorded along with both witnesses' signatures; and the viewing of tapes with suspected criminal activity should be better itemized and then archived for future reference.
21. A protocol should be developed on recording information by videotape or audiotape from witnesses in police interviews. It is important that the technology—video and audio—used by officers is of sufficiently high quality to ensure that the words, gestures, and body language of the person interviewed is accurately and fully recorded.

Adequate Resources

22. The OPP must ensure that it has the necessary resources, such as the requisite number of fully trained officers, to conduct investigations of

sexual assault/abuse in a timely manner, in particular, historical sexual assault/abuse cases.

Communication Plans and Media Releases

23. Press releases should provide appropriate and accurate information to the public. Regular communication between the investigators and the media liaison official should help to ensure this occurs.

Informing Employers

24. An order or directive should be developed that requires the OPP to inform public institutions, such as school boards, child welfare agencies, hospitals, local religious institutions, and Justice partners, that an allegation of sexual assault/abuse has been made against one of their employees if the employee under investigation comes into contact with children in the course of their work. This protocol should also apply to anyone on contract with a public institution or community-sector organization, such as a bus driver or cleaning staff, and anyone who volunteers with a public institution if the individual under investigation comes into contact with children in the course of his or her duties. Notification should be made by a designated senior OPP officer to a designated senior person in the public institution or community sector organization.

Recommendations for the OPP and Other Public Institutions

Child Protection Protocol, 2001

25. The OPP is a partner in the Child Protection Protocol: A Coordinated Response in Eastern Ontario (July 2001). Since this protocol has not been updated, the OPP should meet as soon as practicable with other partners to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on information sharing between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

Joint Training

26. The government of Ontario and the responsible ministries should reinstitute joint training for CAS workers and police officers as soon as practicable. This joint training should include specific training on responding to historical allegations of abuse. For some aspects of training, consideration should be given to including other Justice partners, such as Crown counsel or those working in hospitals, in specialized assault units. Joint training might also support more standardization or the development of “best practices” protocols between police and Children’s Aid Societies.

Court Management Protocol

27. The OPP and MAG, in particular the Crown Attorney’s Office in Cornwall, should develop a court management protocol as soon as practicable. This protocol should address the specific roles, duties, and relationship between OPP officers and Crown attorneys in relation to prosecutions, and be reviewed triennially.

Special Project Prosecutions

28. OPP and MAG should work together to develop joint operational plans in special project prosecutions.
29. MAG and Ontario police agencies should review and compare their major case management protocols to identify and rectify inconsistencies and gaps.

Disclosure in Joint Investigations

30. In joint investigations involving more than one police force, a protocol should be developed that stipulates that one officer should be responsible for all disclosure requests. This officer should have a contact on the other force or forces who assists with disclosure but should personally oversee and track which items have been disclosed to the Crown on behalf of all police forces involved in the investigation.

Institutional Response of the Diocese of Alexandria-Cornwall

Introduction

As will be discussed in the Chapter 12, on the process of Phase 1 of the Inquiry, I found the Episcopal Corporation of the Diocese of Alexandria-Cornwall (referred to in this Report as the Diocese of Alexandria-Cornwall) to be a “public institution” within the language of the Order-in-Council. The response of the Diocese as a “public institution” to allegations of historical abuse could be examined and recommendations could be made for how it could and should respond to such allegations in the future.

I indicated that I would not be investigating the Roman Catholic Church, its doctrine, or its beliefs but rather the corporate entity of the Diocese as an employer of the priests who worked in the Diocese. In this chapter, I begin by providing an overview of the organizational structure of the Roman Catholic Church and the Diocese of Alexandria-Cornwall. This information is provided solely for background and contextual purposes.

The Organizational Structure of the Roman Catholic Church

The organizational structure of the Roman Catholic Church is set out in canon law, the body of laws that govern the Church. The Roman Catholic Church’s central administration is located in Vatican City, an autonomous state that is surrounded by Italy. The Pope is the head of the Church. The Roman Curia, which corresponds to a cabinet and civil service in secular society, assists the Pope in the administration of the Church.

The Church is divided into nine congregations. Each congregation is headed by a cardinal who lives in Rome. The Congregation for the Doctrine of the Faith is responsible for the unity of faith and for overseeing morals in the Church. Since 2001, all cases of alleged sexual abuse involving priests must be sent to the

Congregation for the Doctrine of the Faith. The Congregation for the Clergy is responsible for priests. The Congregation for Bishops is responsible for the functioning of the dioceses.

The Roman Catholic Church also has tribunals. There are three tribunals in Rome: (1) the Apostolic Penitentiary, (2) the Roman Rota, and (3) the Apostolic Signatura. The Apostolic Penitentiary deals with matters of conscience. It is private and involves no written documents. The Roman Rota is the supreme court of the Church. The Apostolic Signatura is the highest tribunal. It functions as the Privy Council did in Canada before the Supreme Court of Canada was declared the highest judicial authority. Its focus is on procedures followed, not on the content of the case. Since 2001, the Congregation for the Doctrine of the Faith has set up a parallel tribunal to the Apostolic Signatura, and as a result, none of the three tribunals discussed above deals with cases of priests alleged to have committed acts of sexual abuse.

The Roman Catholic Church also has pontifical councils, which are bodies that advise the Pope.

The Secretary of State and the congregations, tribunals, and councils constitute the Pope's "Cabinet." These bodies meet with the Pope on a regular basis.

The Roman Catholic Church is divided into ecclesiastical provinces, composed of an archdiocese headed by an archbishop, and a number of dioceses, each headed by a bishop. There are three ecclesiastical provinces in Ontario: Toronto, Kingston, and Ottawa. The Diocese of Alexandria-Cornwall is in the ecclesiastical province of Kingston.

Each diocese consists of a number of parishes. A parish is a body of Catholic people who are served by a priest.

According to Canon 447 of the 1983 *Code of Canon Law*, a Conference for Bishops is a permanent national or territorial institution that coordinates pastoral functions for the Christians in its territory "in order to promote the greater good that the Church offers to humanity." The Canadian Conference of Catholic Bishops (CCCCB) was founded in 1943 and officially recognized by the Vatican in 1948. It is composed of all bishops in Canada, including retired bishops. Paul-André Durocher, Bishop of the Diocese of Alexandria-Cornwall, testified that while the CCCC has no power to establish national protocols for dealing with issues such as sexual abuse, it has great influence on the creation of such protocols at the diocesan level.

Religious orders are groups of lay people or clergy such as priests, nuns, and monks who are not assigned to a particular location. Many religious orders have autonomy from dioceses and bishops because their members make vows of obedience to the superior of the order. To exercise ministry within a diocese, a member of a religious order must obtain permission from the bishop of the diocese.

Authority Within the Catholic Church

There is no central Church authority within particular countries. The Vatican is the sole central authority. The organization of dioceses into ecclesiastical provinces is to foster common pastoral action and relations between bishops in the diocese.

As discussed by Church officials at the hearings, the Catholic Church has a hierarchical, monarchical government structure in which power is held by the Pope as the head of the institutional Church and by the bishop in each diocese. The bishop of each diocese is accountable only to the Vatican.

Each bishop is required to send the Vatican a report on the state of his diocese every five years. Moreover, he is obliged to visit the Vatican every five years, at which time he is questioned on his report.

Orders of Deacons, Priests, and Bishops

There are three orders in the Catholic Church: the Order of Deacons, the Order of Priests, and the Order of Bishops. Deacons can baptize people, preside at marriages and funerals that do not include a mass, and proclaim the gospel and preach during mass. However, they cannot administer the Eucharist.

Priests can perform the same acts as deacons as well as administer the Eucharist, anoint the sick, hear confession, and, if so delegated by the bishop, preside over confirmation ceremonies. A priest has three main functions: (1) preaching, teaching, and setting up educational programs for his parishioners; (2) administering the sacraments, including the regular celebration of the Eucharist; and (3) acting as a leader, which includes setting up committees at the pastoral level.

The care of the diocese is entrusted solely to the bishop. Bishops can perform the same functions as priests as well as preside at confirmation ceremonies and ordain priests. A diocesan bishop is responsible for (1) evangelization and faith education, which involves preaching and teaching and ensuring that these duties are being performed well throughout the diocese; (2) liturgy, which involves leading the celebration of sacraments; and (3) leadership and organization, which includes being responsible for the financial administration of the diocese, the appointment of priests, deacons, and support staff, and the establishment of commissions and committees to coordinate Church life. It is important to note that diocesan bishops have no power to change anything regarding sacramental or liturgical law in the Church.

According to Canon 378 §1, a bishop must be:

1. outstanding in solid faith, good morals, piety, zeal for souls, wisdom, prudence, and human virtues, and endowed with other qualities which make him suitable to fulfill the office in question;

2. of good reputation;
3. at least thirty-five years old;
4. ordained to the presbyterate for at least five years;
5. in possession of a doctorate or at least a licentiate in sacred scripture, theology, or canon law from an institute of higher studies approved by the Apostolic See, or at least an expert in the same disciplines.

At least every three years, the bishops of an ecclesiastical province or a Conference of Bishops meet to compile a list of candidates considered suitable to become bishops. When a vacancy arises in a diocese the Apostolic Nuncio, also known as the Papal Nuncio, the ambassador of the Pope in a particular country, consults his networks to try to identify the person or persons who would be best for the diocese. In consultation with lay people and others, he prepares a list of three names, which he sends to the Congregation for Bishops in Rome. The prefect of the Congregation in Rome then gives his choice to the Pope, who has the final word on the nomination.

Organizational Structure of Dioceses in Ontario

The federal, provincial, and territorial governments of Canada do not recognize the Catholic Church as a legal entity. They recognize only the corporations under which Catholic dioceses operate. Diocesan corporations are autonomous, private corporate entities. Like other corporations, diocesan corporations are subject to regulations relating to corporate registration, taxation, and charitable status. In all of Canada other than Quebec, the bishop is the sole member, officer, and director of a diocesan corporation. Subject to certain negative financial limits beyond which a bishop cannot act without the Pope's permission, a diocesan bishop has control of all of the diocesan corporation's affairs.

Diocese of Alexandria-Cornwall

St. Andrew's Parish in the county of Stormont and St. Raphael's Parish in the county of Glengarry were granted official status by the Roman Catholic Church in 1802. The Diocese of Alexandria was established in 1890. In 1976, Bishop Eugène LaRocque was granted permission from the Congregation for Bishops to establish a co-cathedral in Cornwall and affix the name Cornwall, so that the Diocese became known as the Diocese of Alexandria-Cornwall.

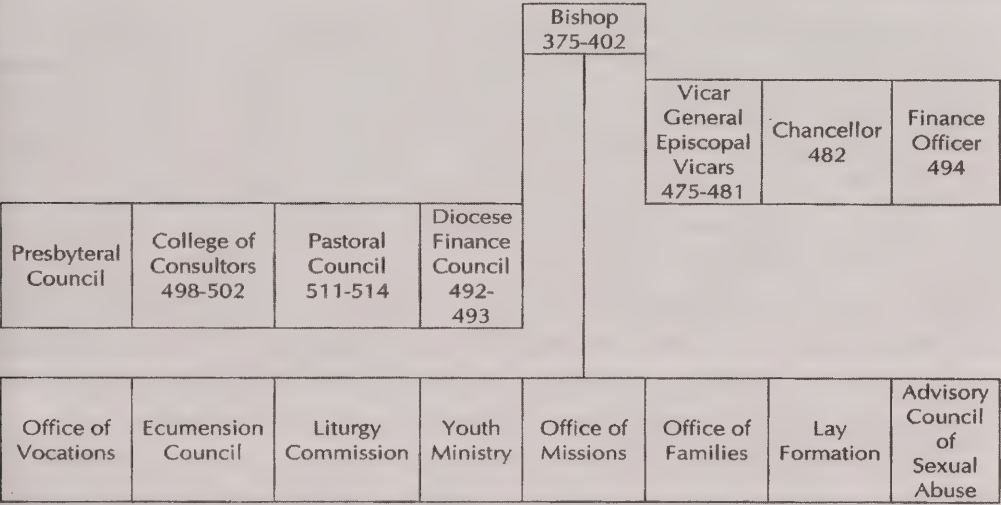
Approximately 56,000 of the 87,000 people in the geographic area of the Diocese of Alexandria-Cornwall are Catholic. There are thirty-one parishes in the Diocese of Alexandria-Cornwall. These parishes are located in the counties of Stormont and Glengarry as well as in the City of Cornwall. The largest parish in the diocese is St. Columban's, in Cornwall.

The Diocese of Alexandria-Cornwall is divided into four deaneries, which are groups of parishes.¹ Parishes are grouped to assist in facilitating collaboration among those that share geographic or linguistic similarities. The priests in each deanery elect a priest as a dean, and deans become members of the Presbyteral Council (described below). There are approximately thirty priests in the Diocese. About twenty of these priests are active and the others are retired.

The Diocese of Alexandria-Cornwall has been led by the following bishops:

- 1941–1966 Rev. Rosario Brodeur
- 1962–1964 Rev. Jacques Landriault (Auxiliary Bishop)²
- 1964–1967 Rev. Joseph-Aurèle Plourde (Auxiliary Bishop)
- 1967–1974 Rev. Adolphe Proulx
- 1974–2002 Rev. Eugène LaRocque
- 2002– Rev. Paul-André Durocher

A chart illustrating the governance structure of the Diocese of Alexandria-Cornwall follows:



The Vicar General, Episcopal Vicars, Chancellor, and Finance Officer are the “backbone” of the bishop’s staff. All dioceses have at least one vicar general, a priest who assists the bishop and exercises some administrative authority. Bishop Durocher testified that there is currently one Vicar General in the Diocese of

1. The City of Cornwall has an English and a French deanery, as does the surrounding countryside.

2. An auxiliary bishop is an additional bishop assigned to a diocese for reasons such as if the diocesan bishop is unable to perform his functions or if the diocese is so extensive that it requires more than one bishop to administer.

Alexandria-Cornwall. Some bishops have episcopal vicars, to whom the bishop delegates some of his powers. Bishop Durocher stated that there are not currently any episcopal vicars in the Diocese of Alexandria-Cornwall. The Chancellor is responsible for maintaining the archives of the Diocese as well as the publication of decisions, edicts, and decrees of the Bishop. It is not necessary for him to be a priest. The Finance Officer is the chief assistant to the Bishop in administering the finances and assets of the Diocese. He is generally a lay person.

The councils described on the left of the chart are consultative bodies that assist the Bishop in the administration of the Diocese. The Presbyteral Council is a subset of priests, both active and retired. It includes the Vicar General and the Chancellor, priests elected by their peers, and priests named by the Bishop. A smaller group of five priests makes up the College of Consultors. This group acts only in special circumstances. For example, if the Bishop were incapacitated, the College of Consultors would convene to elect an administrator to replace him while a new Bishop was being named. Also, the Bishop needs to obtain this group's permission to sell property over \$450,000 or to close or open a new parish. The Pastoral Council is an advisory body to the Church that is composed mainly of lay people.

Diocesan activities are carried out by certain "ministries" or "commissions," listed at the bottom of the chart. The Office of Vocations deals with the recruitment and training of future priests. The Ecumenism Council deals with the relationship of the Diocese with other churches. The Liturgy Commission represents the Diocese at national or provincial meetings regarding liturgical policies, practices, or developments. The Youth Ministry provides services to youth, including educational and religious services. The Office of Missions focuses on local, national, or international missionary activities of the Church. The Office of Families deals with marriage preparation, marriage counselling, remarriage, and the death of a spouse. And finally, the Lay Formation Ministry recruits and develops leadership teams to carry out diocesan and parish activities.

The next section of this chapter discusses the expert evidence presented at the Inquiry on canon law and on sexual abuse by members of the clergy. Father Thomas Doyle and Father Frank Morrissey were qualified as experts on these subjects at the hearings. They discussed issues such as the Catholic Church's historical response to sexual abuse by clergy, the 1983 *Code of Canon Law*, the 1992 *From Pain to Hope* document of the CCCB, and the 2001 and 2002 norms. Topics such as the secret archives of the Church as well as screening and training of members of the clergy on how to address sexual abuse were also canvassed. A discussion of the policies and protocols developed in the Diocese of Alexandria-Cornwall to address clergy sexual abuse follows the section on

the expert evidence. The balance of the chapter focuses on the institutional response of the Diocese of Alexandria-Cornwall to allegations of sexual abuse of and inappropriate contact with young persons by various members of the clergy. It discusses the institutional response of the Diocese to allegations of sexual misconduct by Father Gilles Deslauriers, Father Carl Stone, Father Charles MacDonald, Father Romeo Major, Father Paul Lapierre, Father Ken Martin, and other priests.

Expert Evidence on Canon Law and Sexual Abuse by Clergy

Background of Experts

Father Thomas Doyle received a Doctorate in Canon Law from the Catholic University of America in Washington, DC, in 1978. He obtained a Masters degree in Canon Law from the University of Ottawa in 1977. His dissertation was "The Canonical and Legal Foundation of the Dominican Order in Canada." Father Doyle also received his Pontifical Licentiate in Canon Law from Saint Paul University in Ottawa in 1977. In addition, Father Doyle has Masters degrees in Philosophy, Political Science, Theology and Church Administration.

Father Doyle was ordained as a Catholic priest in 1970 in Dubuque, Iowa. A year after his ordination, he was assigned to a Dominican parish in River Forest, Illinois, where he worked as an associate pastor for approximately three years. In 1974, he was appointed an advocate for the Metropolitan Tribunal of the Archdiocese of Chicago, Illinois, and from 1978 to 1981, he served as a judge for this same tribunal. From 1986 to 1990, he was a tribunal judge for the Diocese of Scranton, Pennsylvania, and from 1991 to 1993, for the Diocese of Lafayette in Indiana. Father Doyle was also a tribunal judge for the Diocese of Pensacola-Tallahassee from 1993 to 1995.

Father Doyle served as secretary-canonist at the Vatican embassy in Washington, DC, from 1981 to 1986. His primary duties entailed managing the program whereby dioceses were created, candidates for the Office of the Bishop were proposed to the Vatican, and bishops were transferred. As the official staff canon lawyer, he was also responsible for a variety of research projects for the Papal Nuncio to the United States and provided assistance on difficult personnel issues, including cases of clergy sexual abuse.

Father Doyle served two terms as a consultant on matters of canon law for the United States National Conference of Catholic Bishops.³

3. Now called the United States Conference of Catholic Bishops.

Father Doyle was a faculty member at the Midwest Tribunal Institute of the Mundelein Seminary in Mundelein, Illinois, the Tribunal Institute of the Catholic University of America in Washington, DC, and the Institute of Spirituality in River Forest, Illinois. He was a visiting lecturer in canon law at the Catholic Theological Union in Chicago, Illinois, from 1979 to 1981 and the Catholic University of America in Washington, DC, from 1981 to 1986.

Father Doyle has acted as a support person, pastoral counsellor, and legal advocate for priests accused of sexual abuse since the mid-1980s. He has also provided pastoral care for victims of clergy sexual abuse and has been involved with victims' groups. Father Doyle is a certified alcohol, drug, and addictions therapist.

Father Doyle has received a number of awards for his work in the area of clergy sexual abuse, including a Priest of Integrity Award from the Voice of the Faithful, a Boston-based group of Catholic lay people committed to assisting survivors of clergy sexual abuse, the Cavallo Award for Moral Integrity, the Isaac Hecker Award for achievements in social justice, the Community Hero Award from the Association of Trial Lawyers, and the Red Badge of Courage Award from the Survivors Network of those Abused by Priests (SNAP). He has also received an official commendation from the Dominican Fathers for his "prophetic work in drawing attention to clergy sexual abuse and for advocating the rights of victims and abusers."

Father Doyle has served as a consultant and expert witness on several hundred clergy abuse cases in the United States, Ireland, Israel, and Canada. He has been qualified as an expert in canon law, Church governmental structures, penal processes, and the rights and obligations of clerics; the spiritual and pastoral dimensions of clergy sexual abuse; and the historical background of clergy sexual abuse in the United States.

Father Doyle has authored a number of publications, including entries on canon law topics in *The Concise Catholic Encyclopedia* and articles on clergy sexual abuse. He co-authored a book entitled *Sex, Priests, and Secret Codes*, in 2006.

Father Doyle has worked on developing policies and procedures for clergy sexual abuse for dioceses and religious orders in the United States, Australia, and New Zealand. In 1985, he co-authored a manual entitled "The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner." Father Doyle and his co-authors assembled an interdisciplinary team of experts on "medical, legal, psychological, moral and scriptural" child sexual abuse, to provide bishops in the United States with information to assist them with this issue. (The United States Conference of Catholic Bishops declined to accept this manual.) In 1986, Father Doyle and his co-authors sent the manual to all bishops in the United States. Father Doyle has since delivered seminars to priests in different areas of the United States on the legal, pastoral, and psychological aspects of sexual abuse of children.

Father Thomas Doyle was qualified at the Cornwall Public Inquiry as an expert in canon law and on the historical background of clergy sexual abuse.⁴

Father Francis Morrissey also provided expert testimony at the Inquiry. He has eleven degrees from the University of Ottawa and Saint Paul University. In 1972, he received a Doctorate in Canon Law from Saint Paul University. His doctoral dissertation, “The Juridical Status of the Catholic Church in Canada, 1534–1840,” addressed Church–state relationships in Canada.

Father Morrissey was ordained as a priest in Ottawa in the Missionary Oblates of Mary Immaculate in 1961. As a member of a religious institute, he is not incardinated in a diocese.

Between 1966 and 1983, Father Morrissey held several positions in the Canadian Canon Law Society, including President, Secretary-Treasurer, and Executive Secretary. He is an honorary life member of this society as well as the Canon Law Society of America, the Canon Law Society of Great Britain and Ireland, the Canon Law Society of Australia and New Zealand, and the Canon Law Society of Southern Africa.

From 1966 to 2005, Father Morrissey was a consultor to the Canadian Conference of Catholic Bishops’ (CCCCB) Canon Law Commission.

From 1973 to 1983, Father Morrissey was a judge for the Quebec Metropolitan Tribunal. He was appointed in 1983 as a judge for the Canadian Appeal Tribunal, the highest Church court in Canada for the adjudication of marriage cases. He continued in this capacity at the time of the Inquiry.

From 1985 to 2000, Father Morrissey served as a consultor to the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law in Vatican City. From 1994 to 1999, Father Morrissey was a consultor to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in Vatican City.

From 1972 to 1984, Father Morrissey was the Dean of the Faculty of Canon Law at Saint Paul University. In 2007, Father Morrissey became an adjunct professor at Saint Paul University in Ottawa. From 1984 to 2007, he was a titular professor at the Faculty of Canon Law of Saint Paul University. He has taught courses on several subjects, including Church penal law and crimes and penalties.

Father Morrissey received an award from the Pope for his work on the preparation of the revised 1983 *Code of Canon Law*. He also is the recipient of awards

4. The Diocese of Alexandria-Cornwall brought a motion to exclude the evidence of Father Thomas Doyle. Among the grounds were that Father Doyle was hostile to the interests of the Diocese and the Catholic Church and that he was biased and should not be qualified as an expert. I denied the motion on August 29, 2007. I stated that the Inquiry was a non-adversarial proceeding and that, in my view, Father Doyle has the qualifications to provide contextual expert evidence. Issues of concern regarding his testimony would go to weight.

from the Canon Law Society of America and the Canadian Canon Law Society for his work in the development and teaching of law.

Father Morrissey founded *Studia canonica*, a professional journal in canon law that is recognized worldwide, and he was the editor of this journal between 1967 and 2004. He has authored over 300 articles in the field of canon law and Church history, including a number of articles on sexual abuse of minors by clergy and responses to this abuse.

Father Morrissey has acted as a special advisor to Episcopal Conferences on the preparation and implementation of the *Code of Canon Law*. He has been invited to lecture to bishops, priests, and religious and lay people in many countries, including Vatican City, England, Ireland, France, Poland, Spain, Italy, Germany, Belgium, Canada, the United States, South Africa, Lesotho, Ghana, Australia, New Zealand, Kenya, Thailand, Sri Lanka, Denmark, and Peru.

Father Morrissey has testified and offered affidavits as an expert witness in numerous court proceedings in Canada, the United States, Namibia, and Singapore. He has acted as a consultant to parties in Church and secular litigation, some of which involved alleged abuse of young people by clergy.

Father Morrissey was qualified at the Inquiry as an expert in canon law and, in particular, abuse cases involving members of the clergy.

Frequency of Child Sexual Abuse by Roman Catholic Clergy

Father Morrissey states in a 2001 article, “Addressing the Issue of Clergy Abuse,” published in *Studia canonica*, that accusations of clergy sexual abuse were initially met with denial by Church officials. Even when it became evident that some of these accusations were true, Church officials were still reluctant to recognize the extent of this behaviour:

At first, accusations were generally met with denial; later on, when it became evident that there was indeed a foundation to at least some of the accusations, grudging steps were taken to address individual cases ... Church authorities were, obviously, reluctant to recognize the extent of such deviant behaviour. It just did not seem possible that it was widespread; rather, it was considered limited to isolated incidents.

Father Morrissey considers child sexual abuse by clergy a widespread global phenomenon. He stated that since 2001, when the Congregation for the Doctrine of the Faith became responsible for cases of child sexual abuse by clergy, the Congregation has been overwhelmed by the number of cases it has received. According to Father Morrissey, the Vatican has not released statistics on the results of these cases.

The United States Conference of Catholic Bishops commissioned a study, known as the John Jay study, to determine the prevalence of sexual abuse by priests and members of religious orders in the United States from 1950 to 2002. This information was collected through surveys distributed to the American dioceses and religious orders. Ninety-seven percent of the dioceses, which represented approximately 99 percent of Catholics in the United States, completed the surveys. There were some shortcomings in this study, according to Father Doyle. First, the information was collected from bishops, whose priests were the subject of the research in their respective dioceses. Father Doyle stated that a few dioceses were uncooperative and did not comply with the study. Second, the survey results did not include allegations considered to be “unfounded” or that were withdrawn. According to Father Doyle, there were some cases in which a bishop reported fewer allegations of sexual abuse than were reflected in diocesan files. When the bishops were asked about the discrepancy, they would explain that they had decided unilaterally that some of the allegations were unfounded.

According to the John Jay study, 4,392 of the 109,694 priests in active ministry between 1950 and 2002 were accused of sexual abuse of a minor, according to Church officials. This number represents approximately 4 percent of the priests in active ministry during this period. The study found that the number of complaints increased significantly in the 1960s and 1970s, peaked in the 1970s, and decreased in the 1980s and 1990s. According to the study, 81 percent of the complainants were male and the number of complaints regarding sexual abuse of males increased more than sixfold between the 1950s and 1970s.

The John Jay study reported that 56 percent of the accused priests had one allegation against them; 27 percent had two or three allegations against them; nearly 14 percent had four to nine allegations against them; and 3 percent of the priests had ten or more allegations against them. The 149 priests who had ten or more allegations against them involved 3,000 alleged victims and constituted 27 percent of the allegations.

Father Morrissey testified that he does not know of a Canadian study equivalent to the John Jay study.

The Catholic Church's Historical Response to Sexual Abuse by Clergy

Prior to 1917

Both Father Doyle and Father Morrissey provided testimony on early Catholic Church documents that discuss the seriousness of sex between adults and children. Sexual sins were raised at Catholic Church Councils, meetings of Church leaders at which current issues and their implications for the Church are discussed.

Councils often produce “exhortatory” statements and canons in regard to issues discussed. Many Councils, including the Elvira Council, the Lateran Councils, the Council of Basel, the Council of Trent, and the First Vatican Council or Vatican I, issued canons that condemned the sexual abuse of minors. Some of these laws set out penalties. For example, in 1178 the Third Lateran Council passed legislation stating that clerics who engaged in pederasty or sodomy were to be “dismissed from the clerical state” or “confined to monasteries to do penance.” Furthermore, canons issued as a result of the Council of Basel condemned not only sex between clerics and young boys but also clergy superiors who condoned this activity or who were aware of such activity but failed to take any action.

The Council of Trent authorized the use of *ex informata conscientia*, or “informed conscience,” which allows a bishop to take action against a priest based on information received rather than proceeding through a lengthy administrative or judicial process. In other words, if a bishop obtained what he believed to be reliable information that a priest was sexually abusing a child, he could suspend the priest without process.

Father Doyle explained that sexual sins, such as sexual relations between priests and children or young adolescents, were mentioned regularly in the penitential books. These books were unofficial manuals used between approximately the 6th and 12th centuries that were designed to assist priests in hearing confessions. They contained lists of sins and corresponding penances, and according to Father Doyle, are a valuable source of information about what the community considered to be inappropriate behaviour. The higher the rank of the Church figure, the more stringent the penalties.

Father Doyle discussed the *Book of Gomorrah*, written in the 11th century by St. Peter Damian, which describes a variety of sexual crimes by the clergy, including a priest soliciting sex from male or female penitents during confession and sex between priests and bishops and young boys. It also condemns ecclesiastical and religious superiors who condone this type of activity. When St. Peter Damian sent a report on these issues to the Pope, the Pope’s response was that although these issues were serious, a priest would not be defrocked for only one or two instances of sex with a minor.

The first formal collection of Church laws, promulgated in 1234, contained procedures on sexual abuse of a child by a cleric. Priests convicted of abusing a child would be sentenced to imprisonment in a monastery for seven years with their diet restricted to bread and water.

In the mid-16th century, Pope Pius V issued two documents that addressed clergy sexual abuse, *Horrendum est* and *Suit nuper*. The former, which set out penalties for the sexual abuse of young boys by the clergy, was a public document that was posted on the doors of churches.

In 1741, Pope Benedict XIV issued a document that addressed solicitation of sex by priests within the context of sacramental confession. Father Doyle explained that while some areas issued local legislation regarding solicitation in the confessional, this was the first document on the subject that “touched the entire Church.” As Father Doyle stated, misusing the sacrament of confession in this way is extremely serious, as people are at their most vulnerable during confession. Roman Catholics believe that in confession, the priest takes the place of Christ in giving them absolution. They believe they will be condemned to hell if they die without absolution.

In 1866, Pope Pius IX issued an instruction that imposed absolute secrecy on the process of prosecuting crimes of solicitation during confession.

1917 Code of Canon Law

The first *Code of Canon Law* was created in 1917 under Pope Pius X. Canon 2354 §2 states that if a cleric is convicted of raping a youth of the opposite sex, he will be:

... punished by an ecclesiastical tribunal, according to the varying degree of the fault, with penances, censures, privation of office and dignity and, if it seems necessary, also with deposition.

Canon 2359 §2 states that if a cleric engages with a minor under sixteen years old in a number of sexual acts, including sodomy, he will be “suspended, declared infamous,” and “deprived of any office, benefice, dignity” and responsibility within the Church. In more serious cases, the cleric would be removed from his position in the Church. The bishop was required to hold a formal penal trial if he wished to have an accused priest dismissed from the clerical state. If he wished to remove the priest from ministry, he could do so through “administrative action,” meaning that no formal trial was required. According to Father Morrissey, few dioceses conducted canonical penal processes.

Allowing a bishop to suspend a cleric under his authority by way of informed conscience, authorized by the Council of Trent, was confirmed in Canon 2186. However, a bishop was not authorized to dismiss a priest from the clerical state through informed conscience. If a bishop wished to take this step, he was required to establish a formal tribunal to hear the case and there was an opportunity to appeal the decision to an ecclesiastical court.

According to the 1917 *Code of Canon Law*, if a cleric was required to take action but failed to do so, he could be charged with an ecclesiastical crime. Thus, if a bishop knew one of his priests was sexually abusing children and did nothing about it, he could be charged with cooperation in that crime.

Father Morrissey stated that the 1917 *Code of Canon Law* also set out “terrible penalties” for priests who misused the confessional to arrange meetings for a sexual purpose.

1922 and 1962 Instructions

The 1922 document *Instructio de modo procedendi in causis sollicitationis* provided bishops with instructions on how to proceed for cases of solicitation in the confessional and other “worst crimes,” such as homosexuality, bestiality, and sex with minors. Father Morrissey explained that instructions are not laws; rather, they are similar to regulations that delineate how a law is to be applied. The 1917 *Code of Canon Law* set out the laws and penalties regarding the worst crimes, and the instructions delineate which crimes are to be considered the worst crimes and the process for dealing with such crimes. The 1922 document elevated sexual abuse of minors to the level of the worst crime.

The 1922 instructions defined a minor as an individual who had not yet reached puberty. Thus, for sexual abuse of a minor to be defined as a worst crime, the minor would need to be prepubescent, which Father Morrissey stated was twelve years old for girls and fourteen years old for boys.⁵

Father Morrissey explained that although diocesan tribunals were to be set up to deal with the worst crimes, such tribunals were not created until the 1940s. Bishops had a residual plenary power to punish by administrative action, and this was generally how cases continued to be handled.

The 1922 instructions were protected by the Secret of the Holy Office, the highest form of confidentiality in the Church. They were sent to all bishops secretly. The 1922 instructions were stored in the secret archives and were not taught in seminaries. Father Morrissey explained that bishops appointed after 1922 who did not review the archives would not have known of the existence of the instructions.

Father Doyle and Father Morrissey testified that the 1922 and 1962 documents did not forbid people from disclosing sexual abuse to civil authorities prior to the commencement of the ecclesiastical process. However, from the commencement of the Church’s preliminary investigation into an allegation of sexual abuse, anyone involved in the process, including the accuser, the alleged perpetrator, witnesses, and individuals representing the alleged perpetrators, were bound to perpetual silence by the Secret of the Holy Office. According to Father Morrissey, breaching this secret resulted in automatic excommunication.

In 1962, the instructions were revised with only minor changes.

5. Note that the 1922 instructions are in Latin and that they were interpreted by Father Morrissey.

The first time the instructions were officially mentioned in a document from the Vatican was in a 2001 letter from Cardinal Joseph Ratzinger, head of the Congregation for the Doctrine of the Faith at the time. The letter addressed the release of new norms regarding “certain grave delicts ... including the sexual abuse of minors by priests.” It stated that previous norms remained in effect but needed to be revised, and it mentioned the 1962 instructions in a footnote. The mention of the 1962 instructions in Cardinal Ratzinger’s letter raised debate over whether the 1962 instructions were in effect after 1983. Canon 6 of the 1983 *Code of Canon Law* introduced a new procedure for handling allegations of sexual abuse against young people, and it stated that previous legislation was abolished. However, some argued that the instructions were not law and therefore were still in effect. In Father Doyle’s view, whether the 1962 document still applied after the 1983 *Code of Canon Law* was promulgated is a moot point because very few people were aware of the 1962 document and it was not used a great deal.

Father Doyle testified that he believes the secrecy surrounding the 1922 and 1962 instructions is indicative of the large role of secrecy in the institutional Catholic Church.

Response of the Catholic Church to Clergy Sexual Abuse Today

1983 Code of Canon Law

The 1983 *Code of Canon Law*, which continues to apply today, sets out a new procedure for dealing with allegations of sexual abuse by clergy. Canon 1395 §1 states that a cleric who “persists with scandal” in engaging in prohibited sexual activity is to be punished by suspension and “if he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state.” This canon further states that a cleric who engages in prohibited sexual activity “by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.”

Father Morrissey explained that the “just penalties” referred to in this canon are found in Canon 1336 §1, which states:

In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

1. a prohibition or an order concerning residence in a certain place or territory;
2. privation of a power, office, function, right, privilege, faculty, favor, title, or insignia, even merely honorary;

3. a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity;
4. a penal transfer to another office;
5. dismissal from the clerical state.

According to Father Morrisey, this canon contemplates a graduated approach to these penalties and suggests that dismissal from the clerical state should be considered the last step.

Canon 1389 §2 provides a penalty, including dismissal from office, for a Church official who, with culpable negligence, fails to perform an act of ecclesiastical governance. This appears to apply to a bishop who knew that a priest was abusing children but took no action to enforce Canon 1395.

The 1983 *Code of Canon Law* set the limitation period for a case of sexual abuse of a minor at five years.

In addition, it removed the ability of a bishop to proceed by way of informed conscience, which had enabled a bishop to take action against a priest without proceeding through a formal process. This was considered to be unfair, as it was at the discretion of the bishop and offered no right of defence, recourse, or appeal for accused clergy.

The 1983 *Code* introduced protections and due process rights for accused clergy. Canon 220 states: “No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy.” This canon has been interpreted to mean that an accusation should not be publicized pending the results of a secular trial, in order to protect the reputation of the priest in question. Moreover, Canon 221 states:

- §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.
- §2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.
- §3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.

As Father Morrisey explained, this canon grants a priest accused of abusing a minor the right to canonical counsel, the right to know the accusations against him, the right to know who is testifying against him, and the right to appeal a decision.

Father Morrisey stated that between 1983 and 2001, sexual abuse trials were handled by local tribunals set up at the diocesan level. However, he was not aware of any sexual abuse cases that went to trial in Canada during that period. Father Doyle also stated that there was “scant evidence” that the crimes mentioned in Canon 1395, which included sexual activity with a minor under sixteen years old, were actually prosecuted.

2001 and 2002 Norms

Father Morrisey testified that prior to 2001, it was expected that a warning would be given before a suspension, censure, or excommunication was imposed on members of the clergy. However, since 2001, every priest has been required to sign a diocesan protocol that indicates they are aware of the consequences of committing sexual abuse.

In 2001, the Vatican released a document entitled *Litterae apostolicae motu proprio datae*, which contained new norms regarding the sexual abuse of minors by clergy. The norms raised the age at which an individual is considered to be a minor from under sixteen years old in the 1983 *Code of Canon Law* to under eighteen years old. The limitation period was also increased for cases of sexual abuse of minors by clergy from five years (in the 1983 *Code of Canon Law*) to ten years. Moreover, this limitation period would begin only once an individual had reached the age of eighteen.

Perhaps the most notable change is that the 2001 norms removed the ability of local dioceses to prosecute complaints regarding the sexual abuse of minors by clergy. As mentioned, since 2001, solely the Congregation for the Doctrine of the Faith has been permitted to prosecute such cases. If a bishop receives a complaint of sexual abuse, he is to conduct a preliminary inquiry to determine whether the accusation has a semblance of truth, and if so, he is required to send the information he has gathered, and his recommendations, to the Congregation for the Doctrine of the Faith. However, if a bishop determines that an accusation is unfounded, he is not required to forward any information to the Congregation.

Father Morrisey testified that prior to 2001, the Congregation for the Clergy dealt with some cases of sexual abuse of minors, but he thought that this would have been fairly rare.

Notwithstanding the requirement since 2001 that a bishop refer all cases of clergy sexual abuse of minors to the Congregation for the Doctrine of the Faith, the bishop retains the authority to apply a number of administrative measures, pending the decision from Rome. Canon 1722 states:

To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of

justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist.

In 2002, some adaptations to the 2001 norms were released. Bishops were granted the right to seek a waiver of the ten-year limitation period and the adaptations authorized administrative dismissal from the clerical state, which meant that this could be done without a formal trial.

When the Congregation for the Doctrine of the Faith receives a complaint, it can (1) direct the diocese that sent the complaint to prosecute the case in its own or in another diocese; (2) prosecute the complaint in its own tribunal; or (3) recommend an administrative dismissal from the clerical state. If the diocese prosecutes the case, there is the possibility of appeal to the Tribunal of the Congregation for the Doctrine of the Faith. If the Congregation decides to try the case in its own tribunal, the victim or accused may be interrogated at the Vatican, but generally there are people in the country where the complaint is made who are mandated to gather the evidence and send it to the Vatican. The judges of the Tribunal of the Congregation for the Doctrine of Faith render their decision and inform the affected persons. Then there is an automatic appeal to another bench of judges in the Congregation. After this appeal, the final decision is rendered and the penalty is imposed.

If an individual had made a complaint to civil authorities, the Church generally awaits the outcome of the criminal process. It is important to note, however, that once a case has been sent to the Congregation for the Doctrine of the Faith, all those involved in the case are sworn to perpetual silence. When the Vatican asks a local bishop to set up a tribunal to deal with a case, the tribunal is acting as a circuit court for the Congregation for the Doctrine of the Faith and the Secret of the Holy Office applies to its work. If a victim who is under an oath of perpetual silence decides he is not satisfied with the way the Church has dealt with his case and discloses to the police, the local bishop can excommunicate the victim for breaking the oath.

As Father Morrissey explained, because the canonical trial process is secret, the laity would not usually know that a particular priest had been dismissed from the clerical state because of sexual abuse.

Since 2001, when cases of child sexual abuse by clergy were reserved to the Congregation for the Doctrine of the Faith, the Congregation has been overwhelmed by the number of cases it has received. Father Morrissey stated that it has been difficult to deal with these cases in an expeditious manner.

Canada

The legislation and protocols currently applicable in Canada include the 1983 *Code of Canon Law*, the 2001 and 2002 norms, a 1992 publication of the CCCB entitled *From Pain to Hope*, and laws promulgated by bishops in their respective dioceses.

The Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy (the Winter Commission) was created in 1990 to inquire into the sexual abuse of children by diocesan priests in the St. John's Archdiocese. The Commission was a Catholic Church initiative.⁶ The Archbishop of St. John's appointed former Lieutenant Governor the Honourable Gordon A. Winter as the Commissioner. The Commission's report, referred to as the Winter Report, recommended that the Catholic Church formally acknowledge and accept its responsibility for the abuse of children by members of its clergy.

In 1992, within two years of the publication of the Winter Report, the CCCB released a document entitled *From Pain to Hope*, which made recommendations about policies, procedures, and protocols that should be developed in Canadian dioceses regarding sexual abuse of minors by clergy. However, it is essential to note that this document is not binding on dioceses. The document was sent to all bishops in Canada, who were asked to promulgate a binding diocesan protocol on the subject. Father Morrissey testified that he does not know of any diocese that does not currently have such a protocol. In many cases, these protocols were based on the provisions in the CCCB document.

From Pain to Hope states that the Church "too readily shelters its ministers from having to account for their conduct ... [and] is often tempted to settle moral problems behind a veil of secrecy which only encourages their growth." It encourages the Catholic Church to acknowledge and take responsibility for clergy sexual abuse. The CCCB document states:

The spontaneous reaction of shamed self-defense must be avoided under the circumstances, lest one risk becoming, consciously or not, party to further cases of abuse. The fear of scandal often conditions our instinctive reactions of inadvertently protecting the perpetrators and a certain image of the Church or the institution we represent, rather than the children, who are powerless to defend themselves.

6. G.A. Winter, *Report of the Archdiocesan Commission of Enquiry Into the Sexual Abuse of Children by Members of the Clergy* (Winter Report), (St. John's, NF: Archdiocese of St. John's, 1990), p. viii.

From Pain to Hope suggests that each bishop establish an advisory committee of at least five persons in their diocese and that issues involving sexual abuse should be referred to this committee. The document states that the composition of this committee should be as diversified as possible and should include a canonist, a civil lawyer, and a professional person with experience treating victims of sexual abuse or treating those with sexual disorders. *From Pain to Hope* recommends that the advisory committee develop a protocol to deal with allegations of clergy sexual abuse. It suggests that each diocese appoint a priest, referred to as a “bishop’s delegate,” to take responsibility for issues regarding sexual abuse. In the event of a complaint of clergy child sexual abuse:

The delegate should be empowered and directed by the bishop to act immediately (i.e., within twenty-four hours or as soon thereafter as possible), with a view to determining in a discreet and pastoral manner whether there are reasonable and probable grounds to believe there was child sexual abuse by a priest.

The document states that if the delegate determines that the allegations are frivolous or unsubstantiated, the inquiry will be terminated. However, if such grounds are established, “The priest under inquiry should be placed on administrative leave with pay.”

From Pain to Hope states that if secular proceedings are underway, it may be preferable to delay further canonical inquiry until the matter has been resolved before the secular courts. However, if there are no secular proceedings and the accused priest admits that the allegations are true, the delegate is to immediately present a report on the investigation to the diocesan bishop.

If the priest denies the allegations, the delegate is to conduct further inquiry. If, after hearing from those who have brought the complaint, the delegate believes there is reason to proceed further, the accused priest is to be granted the opportunity to be heard. Lawyers for the diocese or the accused or members of the advisory committee may be asked to participate in this stage of the inquiry. If there is reason to proceed further, with his consent the priest will be referred to a treatment centre for an assessment. If it is determined that the accused priest can be considered responsible for his actions, the advisory committee will determine whether the matter should be referred to the diocesan bishop.

If the diocesan bishop decides to proceed in an administrative manner, then he may impose the appropriate penalties according to Church law. Alternatively, the bishop can decide that the case should be judged by a canonical penal trial and pass the evidence on to the promoter of justice. If the promoter of justice considers it opportune to begin a canonical trial, then the provisions of Canon 1722

can be applied: the accused can be excluded from ministry or from a Church position or function, required or forbidden to live in a particular place or territory, or prohibited from public participation in the Eucharist. If the accused is found guilty at the conclusion of the trial, the appropriate canonical penalties would be imposed.

In 2002, the CCCB established a task force to report on progress regarding *From Pain to Hope* ten years after its release. The task force reported in 2005. It outlined a number of concerns, many of which focused on the treatment of victims and the accountability of bishops. While the task force found that the majority of dioceses had implemented measures related to clergy sexual abuse based on *From Pain to Hope*, some dioceses did not provide the information the task force requested, and as a result, it was not able to confirm that all dioceses had done so.

The task force recommended that the CCCB adopt a national protocol to which the bishop of each diocese would be invited to make a commitment. This approach was chosen in order to respect the autonomy of each diocese. The protocol proposed the retention of the majority of the recommendations in *From Pain to Hope* but suggested further measures to promote greater diocesan transparency in regard to clergy sexual abuse and to increase the accountability of bishops for the management of clergy abuse. The protocol also contained measures designed to prevent clergy sexual abuse, such as security clearance for those working with children. Father Morrissey testified that he was not aware of any follow-up in regard to this document.

United States

In the mid-1990s, after *From Pain to Hope* had been released, the United States Conference of Catholic Bishops published a series of documents on clergy sexual abuse entitled *Restoring Trust*. According to Father Doyle, these documents were fairly ineffectual and were not widely distributed.

In 2002, a series of articles about clergy sexual abuse appeared in *The Boston Globe*. This information led to a grand jury investigation in Boston and about twelve other grand jury investigations in other areas of the United States, some of which were in progress when the Church experts testified at the Inquiry. Father Doyle explained that a grand jury is a body composed of twenty-four people who consider evidence on a particular issue and decide whether there is sufficient evidence to justify proceeding to a trial. He stated that the Boston grand jury investigation revealed that more than eighty priests in Boston had allegedly sexually abused children and either been allowed to maintain clerical assignments or been transferred to another location. Moreover, because the statute of limitations had lapsed, some criminal proceedings were not pursued.

In 2002, shortly after the *Boston Globe* articles were published, the United States Conference of Catholic Bishops developed and adopted the Dallas Charter and Norms.⁷ Generally, a national Conference of Bishops cannot create legislation that applies across the country. However, the United States Conference of Catholic Bishops asked the Pope for permission to enact law for the United States on the issue of clergy sexual abuse, which was granted. Therefore, the Dallas Charter and Norms, unlike *From Pain to Hope*, are binding on all dioceses in the United States.

The Dallas Charter and Norms contain a “one-strike-you’re-out” policy—any person, either priest or deacon, will be permanently removed from ministry for any act of sexual abuse. The original version of the preamble to the norms states: “Sexual abuse of a minor includes sexual molestation or sexual exploitation of a minor and other behaviour by which an adult uses a minor as an object of sexual gratification.” As Father Morrissey explained, this is a broad definition of sexual abuse that can encompass an array of acts from serious sexual abuse to leering. It is noteworthy that in 2006, the United States Conference of Catholic Bishops revised the norms and significantly narrowed the definition of sexual abuse to committing adultery with a minor as understood in canon law.

Father Morrissey was critical of the “one-strike-you’re-out” policy. In his view, the United States Conference of Catholic Bishops should have taken action in regard to clergy sexual abuse much sooner. Father Morrissey believed that this lack of action caused the Conference to act too strongly. In his opinion, removing the option of rehabilitation was excessive. Furthermore, he claimed that although Canon 9 says the law is not retroactive, the “one-strike-you’re-out” rule is improperly being applied retroactively.

Father Doyle also provided some criticism of the Dallas Charter and Norms. He stated that the norms address only deacons and priests who have sexually abused children, not bishops who have abused or have been complicit in a cover-up. He also said that rather than having a face-to-face audit on an annual basis, the United States bishops prefer to provide their own reports regarding their compliance with the Dallas Charter and Norms. There has been criticism that bishops “immediately started to water down the compliance reports.”

The Dallas Charter required the creation of an Office for Child and Youth Protection at the headquarters of the United States Conference of Catholic Bishops. This Office was to assist with the implementation of policies and programs related to the Dallas Charter and to ensure that dioceses were adhering

7. The *Charter for the Protection of Children and Young People and the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* is commonly referred to as the Dallas Charter and Norms.

to the document. A National Review Board was established to assist and monitor the Office in its duties. The National Review Board was also tasked with commissioning a study of the causes and context of clergy sexual abuse in the United States. In 2004, the National Review Board issued a document entitled *A Report on the Crisis in the Catholic Church in the United States*, which focused on the responsibility of the Catholic Church for the sexual abuse of minors by members of its clergy. The Report discussed cover-ups and lack of adequate action in responding to victims of sexual abuse: “Even more troubling than the criminal and sinful acts of priests who engaged in abuse of minors was the failure of some bishops to respond to the abuse in an effective manner.” It made recommendations regarding enhanced screening, training, and oversight of clergy, increased sensitivity and effectiveness in responding to allegations of abuse, greater accountability of bishops and other Church leaders, and improved interaction with civil authorities:

A. Further Study and Analysis

- The bishops and religious ordinaries should continue to support the undertaking of a comprehensive scientific study relating to the causes and context of sexual abuse in the Church and in society. In Article 16 of the Charter, the bishops pledged their willingness to cooperate in such research “with other churches and ecclesial communities, other religious bodies, institutions of learning, and other interested organizations.” The problem of sexual abuse of minors is a societal problem, and the Church can take the lead in addressing the problem throughout society.
- The bishops should agree to ongoing diocesan audits to ensure compliance with the Charter and the Essential Norms.
- There should be a periodic review of the effectiveness and fairness of the zero-tolerance policy to ensure the application of individualized justice.

B. Enhanced Screening, Formation, and Oversight

- Bishops and seminary leaders must ensure that each candidate is a mature, psychologically well-adjusted individual, with an unequivocal commitment to a life of service to the Church and her people, and a clear understanding of the challenges of the priesthood, including celibacy, before admission into the seminary. A bishop must get to know each potential candidate and exercise good judgment in determining whether the candidate is suitable for the priesthood. Candidates should be thoroughly vetted through all appropriate methods.

- Seminaries must provide better preparation for the challenges of living a celibate life in today's culture.
- Seminaries must institute rigorous procedures for continually evaluating the suitability of those admitted to study for the priesthood, as well as mechanisms (including expulsion) for addressing problems identified in the evaluation process.
- Seminaries themselves must be more rigorously evaluated. The upcoming Apostolic Visitation should be conducted by independent, knowledgeable individuals who can provide an honest, informed, and unbiased evaluation. It must examine both the curriculum and the formation program. To the extent that institutions operating certain seminaries are not providing adequate oversight, the seminaries should be placed under different authority.
- A healthy priest is connected to God, connected to his bishop or religious superior, connected to his fellow priests, and connected to the People of God. Accordingly, there must be ongoing intellectual, spiritual, and psychological formation and monitoring of priests after ordination. Priests should be encouraged to participate in fellowship groups with other priests, to form close, healthy relationships with priests and with laity, and to maintain an active prayer life.
- Bishops must meet frequently with their priests to monitor their morale and emotional well-being. A bishop must know his priests.
- Each bishop should meet annually with the religious superior for any non-diocesan priests who are resident in his diocese to ensure that the religious superior takes responsibility for monitoring the non-diocesan priests engaged in ministry in the diocese.

C. Increased Sensitivity and Effectiveness in Responding to Allegations of Abuse

- Seeing to the welfare of victims of abuse must be the primary duty of the Church when confronted with evidence of abuse. Dioceses must ensure that victims of clergy sexual abuse are encouraged to come forward and are treated with respect, dignity, and compassion.
- Bishops and Church leaders must recognize both the criminal and the sinful nature of the sexual abuse of minors by members of the clergy. Bishops must respond vigorously to all allegations of abuse, maintain accurate records of such allegations and the responses thereto, and openly exchange information with other dioceses about such allegations.
- All bishops and leaders of religious orders should meet with victims and their families to obtain a better understanding of the harm caused by

the sexual abuse of minors by clergy. Bishops and leaders of religious orders must be personally involved in this issue and not delegate a matter of such importance to others.

- In assessing individual cases in order to determine whether the priest engaged in an act of sexual abuse of a minor and therefore must be removed from ministry, bishops and other Church leaders should honor the rights of accused priests and consult with their lay review boards, so that together they might strive for individualized justice in light of their developing experience and expertise.
- Dioceses and religious orders should re-examine their litigation strategies to ensure that a pastoral response takes precedence over legal tactics. Dioceses should eschew litigation when possible and earnestly pursue other avenues of resolving allegations of abuse.
- In seeking therapeutic options for priests who have engaged in sexual abuse of minors, the dioceses should use only well-qualified treatment centers that specialize in treating sexual disorders and that are able and willing to evaluate patient outcomes in a disinterested professional fashion.
- The Church should make use of national or regional canonical tribunals in the United States to consider cases for laicization under the Charter in order to ensure that experienced individuals hear and decide these cases and that they are decided in a consistent fashion. Bishops should ensure that the appropriate authorities at the Vatican are provided with a comprehensive and complete file to review when determining whether to laicize a priest.

D. Greater Accountability of Bishops and Other Church Leaders

- The process for selecting bishops should include meaningful lay consultation.
- The bishops should trust and learn to make greater use of those consultative and deliberative bodies established by canon law to assist them in the pastoral care and governance of their dioceses. These bodies should be filled with faithful laypersons and priests who are talented, responsible, and dedicated to the Church, but who are also capable of offering, and who are expected to offer, truly independent counsel to the bishop.
- The Church should consider restoring and strengthening the role of the metropolitan archbishop in overseeing suffragan bishops and should consider steps to enable the national conferences to serve as information clearinghouses and to provide enhanced information flow among dioceses about critical issues facing the Church.

- The bishops should be more willing to engage in fraternal correction and should appeal to the Vatican to intervene if a particular bishop appears unable or unwilling to act in the best interests of the entire Church.
- An audit team through the Office of Child and Youth Protection should review the handling of abuse allegations by individual dioceses and orders. The audit team should publish its findings in a report so that the laity will be apprised of the results.

E. Improved Interaction with Civil Authorities

- Dioceses and orders should report all allegations of sexual abuse to the civil authorities, regardless of the circumstances, or the age or perceived credibility of the accuser.
- Dioceses and orders should endeavor to resolve civil claims and government investigations on reasonable terms and in a manner that minimizes the potential for intrusion of civil authorities into the governance of Church matters.

F. Meaningful Participation by the Christian Faithful in the Church

- The bishops and other Church leaders must listen to and be responsive to the concerns of the laity. To accomplish this, the hierarchy must act with less secrecy, more transparency, and a greater openness to the gifts that all members of the Church bring to her.

Father Doyle testified that Church leaders in the United States are still failing to respond appropriately to complaints of clergy sexual abuse. He stated that there have been instances of bishops intentionally returning sexual abusers to their ministries without disclosing the situation to the parish.

Despite some criticism of the Dallas Charter and Norms, Father Doyle stated, “I do think it is a useful exercise to have a uniform policy ... because if it is suggested as *Pain to Hope* was, you’re going to end up several years down the line with another document such as the 2005 critique of *From Pain to Hope* which mainly said these things look nice but they weren’t done ... I suspect ... the Dallas ... norms will be further refined and changed to reflect the needs that have arisen and the critiques.”

Adequacy of Canon Law to Deal With Sexual Abuse by Clergy

According to *A Report on the Crisis in the Catholic Church in the United States* (2004) by the National Review Board, canon law is inadequate to deal with cases

of sexual abuse for many reasons. The first reason is that canonical tribunals in dioceses do not have the expertise to handle involuntary laicization cases.

The second reason is that the canon law process for dealing with sexual abuse cases is impeded by the concept of “imputability,” which provides that dismissal from the clerical state cannot be imposed if the accused priest is found not fully responsible for his actions due to an illness or psychological condition. Father Morrissey disagreed with this statement and commented that although a bishop could not dismiss a priest from the clerical state due to a mental illness, the Vatican could do so.

The third reason for the inadequacy of the canon law for cases of sexual abuse, according to the Report, was that “process often took precedence over substance.” Convictions could be overturned by the Vatican years after the fact due to failure to follow technical procedural requirements. One bishop was quoted in the Report as saying, “We were all very hesitant to do a canonical trial because if there’s any procedural flaw in it you can easily be overturned on appeal to Rome.” However, Father Morrissey argued that this situation also exists in secular courts, as an appeal court can overturn a first instance court because procedures were not followed.

The Report also stated there was a sense that Vatican tribunals had traditionally erred on the side of protecting the accused rather than on assisting the victim. Below are some excerpts from the U.S. National Review Board Report:

A significant cause of the inadequate response of Church leaders to allegations of sexual abuse was the fact that in assessing allegations against accused priests, presumptions rooted in both theology and Church culture heavily favored the accused priest. Surveying the landscape in certain dioceses, one bishop noted, “There is a larger pattern of protection of priests first, rather than protecting the children first.”

...

... Until recently, ... bishops all too often treated victims of clerical sexual abuse as adversaries and threats to the well-being of the Church, not as injured parishioners in need of healing. Far too frequently, they treated predator priests as misdirected individuals in need of psychological treatment or a simple change in environment, rather than as criminal offenders to be removed from ministry and reported to civil authorities for possible prosecution and appropriate punishment. These approaches did not solve any problems but rather served to exacerbate them.

...

... [C]anon law procedures made it very difficult to take action against a priest. As one bishop told the Board, "I'm not a canon lawyer, but I happen to think that the Code of Canon Law we've got is flawed ... I just think it's so much weighted toward the rights of the individual that the common good of the Church is not adequately protected."

...

Reportedly, the Vatican courts tended to err on the side of protecting a priest because of a concern that bishops could seek to use canon law to rid themselves of priests whom they did not like or with whom they disagreed on some point or another. The focus of the law and of the canonists interpreting and applying the law historically was on protecting the rights of the accused. Although the Review Board believes it is important to protect the rights of accused priests, it also believes that greater consideration must be given to the protection of the faithful.

Father Morrissey believes that canon law might have been adequate to deal with clergy sexual abuse of children if it had been used. Father Doyle commented that historically it was often within the bishop's discretion to determine how to deal with sexual abuse and that until recently, almost all incidences of sexual abuse of minors were handled without process. Father Doyle testified that in his examination of confidential Church records over a twenty-year period, he had seen evidence of a tribunal process only about three times in several thousand instances of clergy sexual abuse:

... [T]he bishop decided when it was too inconvenient to go through process. And unfortunately, what happened in all the cases, the individual was transferred to another assignment in the same diocese or in another country or another diocese where inevitably he would continue to offend.

Dioceses that received accused priests were often not notified of the reason for the transfer. Father Doyle testified that he knew a priest who turned himself in about two or three times to bishops and was given a new assignment each time. He also mentioned a case in which three priests had been convicted in a canonical trial of sexually abusing young boys at a school in Colombia and their sentence was to study sociology for at least a year outside the country. He said that one of the priests was sent to California, where he had family and it was known why he

was there. Nevertheless, the priest was assigned to another parish and within a week there was another complaint.

In Father Doyle's opinion, it has been a combination of public pressure, the media, and lawsuits that have caused the Church to take action in regard to sexual abuse by clergy:

... [I]t has been the pressure from the media, the public pressure as well as the pressure from the litigation that has caused these things to happen, the action that the Church has taken—the institutional Church has taken. Otherwise, sad to say, I think they'd still be dragging.

The Effect of Secrecy in the Catholic Church on Dealing With Clergy Sexual Abuse

Both experts testified that canon law and the Catholic Church have often displayed an excessive preoccupation with secrecy. As Father Doyle stated:

Secrecy is imposed on anything that could render the church somewhat vulnerable or embarrassing to it. Secrecy is imposed on most church activities, most legislative activities, most deliberative activities that go on behind closed doors.

Father Morrissey agreed that secrecy has often attached to issues involving a person's conscience; sexual assault always involves conscience because it is a serious sin, and "sin is a matter of conscience."

Father Doyle agreed with the following statement in *From Pain to Hope*: "Secrecy is the breeding ground for the development and repetition of child sexual abuse." In his view, the current process for dealing with sexual abuse complaints is cloaked in secrecy:

... [O]nce the preliminary investigation is concluded, it goes to the Congregation [for the Doctrine of the Faith], and in my interpretation ... that's when the secrecy is imposed ...

...

... You wrap it up in an envelope and send it to Washington, D.C., to the Papal Nuncio⁸ and ask him to transmit it to the Congregation in Rome through the diplomatic pouch ... Some time later ... you get a letter back saying, "We've looked at this case. We now are remanding it back to

8. The Pope's ambassador in a country.

you for a judicial trial.” ... You, the bishop, then have to constitute a tribunal ... You name the officials, the promoter of justice. You have the promoter of justice start the process, and that’s all covered by confidentiality or secrecy. He sends out letters to the potential witnesses, to the accused, to the victims ... the people involved, and they start the process which means they will come for depositions, to give testimony, and this is all under the cloak of secrecy.

Secret Archives

Canon law requires each diocese to maintain a secret archive to which only the bishop has a key.

Father Doyle testified that the 1922 instructions regarding the “worst crimes” stated that it was to be retained secretly, which suggested that the 1922 instructions should be kept in the secret archives. As discussed, the fact that this document was placed in the secret archives meant that any bishop after 1922 who did not go through the old archives would not have known of this document’s existence.

Father Morrissey testified that before 2001, files regarding allegations of sexual abuse against minors were kept at the diocesan level and often they were placed in the secret archives. Since 2001, cases involving allegations of sexual abuse against minors must be sent to the Vatican.

Problems of secrecy in the Church and an inadequate system for the files of clergy members are discussed in *A Report on the Crisis in the Catholic Church in the United States*:

... [I]n part out of an overemphasis on secrecy, dioceses and religious orders did not utilize adequate methods to track allegations against priests. Because records relating to an individual priest often would be kept in three or four separate files, Church leaders investigating allegations of sexual abuse by an individual priest did not always have all of the information they needed in order to assess the credibility of the allegations. Important documents often were maintained in “secret archives” pursuant to canon law, and Church officials without access to these files often were unaware of critical past allegations against a priest when addressing other allegations. Reflecting this, Cardinal Law at one point put the blame for the transfer of predator priests in part on an inadequate filing system.

The Review Board believes that dioceses and religious orders must maintain more open and accurate personnel records regarding priests, which should be audited and reviewed by diocesan lay boards or outside

auditors. Nevertheless, the existence of a bad filing system only partially explains, and in no way excuses, the failing of various dioceses to respond properly to evidence of sexual abuse by members of their clergy. Had bishops placed the issue of sexual abuse of minors by the clergy at the top of their agenda, we have no doubt that the filing system on priest perpetrators would have been improved.

Impact of Clericalism on Dealing With Clergy Sexual Abuse

Father Doyle explained that clericalism is the belief that clerics are entitled to deference and are above lay people as a result of their ordination. He explained that this attitude is encouraged by Catholic Church doctrine, which teaches that priests take the place of God and Christ. The U.S. National Review Board Report in 2004 stated that Church leaders were often reluctant to acknowledge that “a man ordained to be ‘another Christ’” could have engaged in sexual abuse:

Clerical culture and a misplaced sense of loyalty made some priests look the other way in the face of evidence of sexual abuse of minors, and contributed to the unwillingness of members of the clergy to condemn the conduct of a brother priest.

Father Doyle testified that victims of clergy sexual abuse who believe that a priest takes the place of Christ or God are confused about why a member of the clergy would abuse them. Some victims, he said, may think that the abuse occurred because they did something wrong. This creates obstacles to the disclosure of the sexual abuse. Father Doyle also explained that victims may fear divine retribution for accusing a priest of abuse. Moreover, some victims have been punished by their parents for accusing a priest of such acts.

The concept that lay people are lower than the clergy remains deeply entrenched in Church law, tradition, and doctrine, explained Father Doyle. He noted, however, that Vatican II, which began in the early 1960s, initiated a process whereby the chasm between the clergy and the laity began to be narrowed. The clergy and the hierarchy began to become demythologized. As a result, some Catholic people began to overcome their fears that something bad would happen to them if they exposed a priest to authority figures in the Roman Catholic Church for engaging in sexual abuse.

Screening and Training of Candidates for the Priesthood

Before a candidate for the priesthood is admitted to seminary, he is required to be presented by a bishop. Canon 241 §1 states:

A diocesan bishop is to admit to a major seminary only those who are judged qualified to dedicate themselves permanently to the sacred ministries; he is to consider their human, moral, spiritual, and intellectual qualities, their physical and psychic health, and their correct intention.

This canon further states: "If it concerns admitting those who were dismissed from another seminary or religious institute, testimony of the respective superior is also required, especially concerning the cause for their dismissal or departure."

The U.S. National Review Board Report stated that over the past fifty years some men who should never have been admitted to the seminary or ordained have become priests. The Report discusses several reasons why this occurred, among them that "[s]eminaries simply presumed that no one afflicted with a severe sexual dysfunction would have heard the call to the priesthood in the first instance." It also stated that bishops may have felt reluctant to question a call from God. However, the Report states that this reluctance is based on a misunderstanding of the bishop's role in determining whether candidates are suitable for the priesthood. It cited a letter from Pope Paul VI that made it clear that those involved in the education of priests have a responsibility not to admit candidates who are unsuitable to enter the seminary:

Those who are discovered to be unfit for physical, psychological or moral reasons should be quickly removed from the path to the priesthood. Let educators appreciate that this is one of their very grave duties. They must neither indulge in false hopes and dangerous illusions nor permit the candidate to nourish these hopes in any way, with resultant damage to himself or the Church. The life of the celibate priest, which engages the whole man so totally and so delicately, excludes in fact those of insufficient physical, psychic and moral qualifications. Nor should anyone pretend that grace supplies for the defects of nature in such a man.

Although canon law has a long history of addressing clergy sexual abuse, not every seminarian has received training in canon law. Before World War II, priests-in-training, even those at the doctoral level, did not receive much information about conducting canonical trials because these trials were simply not held. It was not until 1946 that bishops in Canada began to seriously consider establishing Catholic Church tribunals.

As Father Morrissey stated, most priests who were ordained between 1967, the end of Vatican II, and 1983, when the revised *Code of Canon Law* was

released, did not study canon law in the seminary. He stated that Vatican II made significant revisions to canon law. This gap in canon law training, he explained, means that many of those individuals who are bishops today have not studied canon law.

Father Doyle testified that when he has spoken to bishops about why they have not acted when confronted with child sexual abuse by one of the priests in their dioceses, some have responded that they were uncertain of the appropriate course of action in this situation. Father Doyle explained that these bishops “had been trained in a system that said that the welfare of the institution” was of “paramount importance” and the priesthood was a “sacred brotherhood” that must be protected “at all costs.”

Many bishops have also told Father Doyle that they did not have a full understanding of the devastating effects clergy sexual abuse has on victims. Through his experience dealing with victims of clergy sexual abuse, Father Doyle has realized that celibate priests and bishops may have difficulty comprehending the pain of parents when they learn that their child was abused by a priest.

Canon 242 §1 of the 1983 *Code of Canon Law* states that each nation is to have a program of priestly formation that is established by the Conference of Bishops and approved by the Vatican, and this program is to be “adapted to new circumstances,” with the approval of the Vatican. *From Pain to Hope* states:

The formation of candidates to the priesthood in the Catholic Church is a long and complex process which includes various dimensions: theological, spiritual, communal and pastoral formation within a framework which usually requires three or four years of study and one or two years of pastoral experience.

In 1992, John Paul II issued a document called *Pastores dabo vobis*, which set out the four poles of formation of priests: human formation, spiritual formation, intellectual formation, and pastoral formation. In 2006, drawing on *Pastores dabo vobis*, the United States Conference of Catholic Bishops published a program of priestly formation.

Father Morrissey testified that although there are Canadian documents that address the formation of priests, he believes Canadian seminaries are using the U.S. document as it is the most current.

According to the U.S. program, if there is any evidence that a candidate for the priesthood has engaged in criminal sexual activity with a minor or showed an inclination toward such activity, he will be disqualified from admission to the priesthood. It also states that if there is any credible evidence that a candidate is sexually attracted to children, he will be dismissed from the seminary

immediately. The program stresses the need for candidates for admission to the priesthood to have healthy psychosexual maturity. It states that the program of formation must be designed to assist candidates for the priesthood to meet the challenge of psychosexual growth. It expresses the need for “high standards and strict vigilance ... in evaluating human thresholds pertaining to sexuality,” and says, “As we have recently seen so dramatically in the Church, when such foundations are lacking in priests, the consequent suffering and scandals are devastating.” The annual evaluation of candidates for the priesthood is to include an evaluation of “[a]ffective maturity and healthy psychosexual development; clarity of male sexual identity; an ability to establish and maintain wholesome friendships; the capacity to maintain appropriate boundaries in relationships.”

Duty to Report

Legislation requiring any person having information regarding the physical ill treatment of a child or of a child in need of protection to inform the civil authorities has existed in Ontario since the 1965 *Child Welfare Act* was introduced.⁹ In 1979, section 49 of the 1978 *Child Welfare Act* was proclaimed. This section placed a duty to report suspected abuse specifically on professionals and a penalty was imposed for failure to report.¹⁰ Subclause 94(1)(f)(ii) of the 1980 *Child Welfare Act* added that every director, officer, or employee of a corporation who knowingly concurred in contravening the corporation’s duty to report was guilty of an offence and set out penalties for such an offence.¹¹ The *Child Welfare Act* was replaced in 1984 with the *Child and Family Services Act*.¹² Two sections were added to expand the definition of a child in need of protection to include a child who was being sexually molested or was at risk of being sexually molested or exploited. The *Child and Family Services Act* specifically includes priests in its list of professionals who have a duty to report suspected abuse:¹³

- (2) A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society.
- (3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be

9. S.O. 1965, c. 14

10. *Child Welfare Act*, 1978, S.O. 1978, c. 85.

11. R.S.O. 1980, c. 66.

12. S.O. 1984, c. 55.

13. R.S.O. 1990, c. C.11.

suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society.

R.S.O. 1990, c. C.11, s. 72(1-3).

- (4) Subsection (3) applies to every person who performs professional or official duties with respect to a child, including,
 - (a) a health care professional, including a physician, nurse, dentist, pharmacist, psychologist;
 - (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, member of the clergy, operator or employee of a day nursery and youth and recreation worker;
 - (c) a peace officer and a coroner;
 - (d) a solicitor; and
 - (e) a service provider and an employee of a service provider. R.S.O. 1990, c. C.11, s. 72(4); 1993, c. 27, Sched.
- (5) In clause (4)(b),
 “youth and recreation worker” does not include a volunteer.
- (6) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director.
- (7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

The child protection legislation that has existed since 1965 states that the duty to report applies regardless of whether the information is confidential or privileged. The exception is solicitor–client privilege.

Father Morrissey stated if an individual admits to sexually abusing a child in the confessional, the priest who hears the confession is confronted with a conflict between the seal of confession and the duty to report. The seal of confession applies the highest level of secrecy to any communication to a priest in the confessional. In fact, the canon dealing with the confessional seal is the sole canon that states that it is inviolable, meaning there are no exceptions. Any priest who breaks the confessional seal is automatically excommunicated. It is Father Doyle’s view that canon law will never change with respect to the seal of confession.

It is important to note that the Dallas Charter and Norms, binding on all American dioceses, requires that allegations of sexual abuse be reported to civil authorities, even when not required by law. As Father Morrissey stated, the exception to this is the seal of confession.

Father Doyle expressed the view that mandatory reporting by clergy and Church employees is important because it lessens the possibility of cover-up and enhances the possibility of healing for victims. It is noteworthy that *From Pain to Hope* states that dioceses will comply with civil reporting laws. However, Father Morrissey testified that in the case of a conflict between the civil law duty to report and the canon law seal of confession, priests are instructed to observe canon law. Father Morrissey stated that canon law does not require a priest who receives information regarding sexual abuse during confession to report it to the bishop; if such information is received during confession, the priest is obliged to keep it confidential.

Father Morrissey explained that Canadian dioceses now have a delegate for child sexual abuse complaints. Thus, any priest who receives information about an allegation of sexual abuse outside of confession should provide the complainant with the delegate's contact information, and the delegate should make the report to the civil authorities.

Father Doyle stated that there is an opportunity for a priest hearing a confession to have a dialogue with and give advice to the confessor, which could include encouraging the perpetrator to seek counselling. He testified that this is a subject that could be addressed as part of the training of seminarians. He also stated that if a priest believed that the person's confession was insincere, he could refuse to grant absolution. Furthermore, if an individual persisted in his sins, the priest could refuse absolution until the individual had taken some action, which could include disclosing the abuse to the authorities. In other words, a priest could make disclosing the abuse part of the confessor's penance. Father Morrissey did not endorse this approach. He stated that he would ask the individual to meet with him outside of the confessional to discuss how the situation could be addressed, and upon meeting, he would remind the individual that anything he told him outside of the confessional could be subject to civil law. Thus, if the situation involved sexual abuse, the priest would warn the individual that anything he told him outside of the confessional could trigger the priest's legal duty to report.

I commend Father Doyle and Father Morrissey for giving serious consideration to this issue and proposing ways in which clergy can fulfil their statutory duty to report child sexual abuse. This very important issue, including their proposals, should be addressed by the Diocese immediately to ensure that civil authorities are alerted to the alleged sexual abuse in order to conduct their respective investigations so that young people can be protected.

From Pain to Hope recommended that Catholics in Canada "become informed about the requirements of provincial and territorial reporting laws on child sexual abuse ... and become involved in information, education and prevention programs

on child sexual abuse.” Father Morrisey testified that every diocese has a mandatory session on this subject for all priests, who must sign a document that states they have participated in this session and are aware of reporting obligations. He also stated that these sessions can be held in collaboration with local Children’s Aid Society authorities or with the local police.

Father Doyle stated that in the United States, a report to the civil authorities is made after the bishop undertakes a preliminary inquiry into the allegations. Father Morrisey testified that he is unaware whether in Canada a complaint is required to be reported immediately or after the bishop conducts a preliminary investigation. In a 1991 article entitled “The Pastoral and Juridical Dimensions of Dismissal from the Clerical State and of Other Penalties for Acts of Sexual Misconduct,” Father Morrisey wrote:

In some places, the Children’s Aid Societies and similar organizations insist that they are to be informed even before the Church conducts any internal inquiry. This will be a matter for a prudential judgment on the part of those involved, and calls for the establishment, if possible, of suitable relations with such organizations beforehand.

According to Father Morrisey, it is the Church’s position that if a person who is no longer a minor reports historical sexual abuse that occurred when he or she was a minor, the person who receives the complaint is not required to report it to the civil authorities. A person who is no longer a minor is considered capable of reporting the abuse to the civil authorities. Father Morrisey contrasted this with the Dallas Charter, which states that the Church will “cooperate with public authorities about reporting in cases when the person is no longer a minor” and that bishops in some states have made a commitment to refer every case of clergy sexual abuse to the district attorney, regardless of whether it involves a duty to report. Father Morrisey was not aware of any similar commitment in Canada.

Treatment of Abusive Priests

In the past, sexuality was treated as something that could be controlled through willpower, and sexual abuse was considered a moral problem. Father Doyle explained that at times, a bishop would “put the fear of God” into a priest who had abused and the priest would promise not to do it again. However, Church experts currently take the position that sexual dysfunction is a highly compulsive form of mental illness, which cannot be willed away, and should not be considered simply a moral failing.

A priest cannot be forced to attend treatment. The Winter Report suggested that convicted priests who have completed prison terms should be offered therapy and that the cost of this therapy should be borne by the diocese. It also proposed that a follow-up and monitoring program exist for all priests after therapy and the archdiocese should be responsible for the implementation and administration of such programs.

There are a number of treatment centres available in Canada for priests who agree to undergo treatment for sexually abusing people. However, there are waiting lists at some of the facilities.

A priest cannot be forced to release his treatment records to the bishop or diocese. However, Father Morrissey explained that if a bishop does not receive a report on a priest's treatment, he may not provide the priest with an assignment or a salary. Therefore, there is considerable pressure on a priest to release his treatment report.

Return to Ministry for Abusive Priests

From Pain to Hope states that rehabilitation is possible for some priests who have committed abuse, while it may not be for other members of the clergy. According to Father Morrissey, true pedophilia is not a curable disorder. Father Doyle said that an individual suffering from sexual dysfunction requires intensive therapy for the duration of his life.

A centre that treats a priest for sexual dysfunction merely provides a medical evaluation. It is a bishop's responsibility to evaluate a priest's fitness for ministry. Father Morrissey testified that although it is unlikely that a priest who has sexually abused a child would be placed back in ministry, there is no categorical prohibition to ensure that this does not occur.

Father Morrissey pointed out that there is a difference between being found unsuitable to exercise ministry and being dismissed from the clerical state. He was of the opinion that with the input of clinicians trained in dealing with the issue, some priests who have committed child sexual abuse could be returned to some working function. Both Father Doyle and Father Morrissey agreed that simply releasing priests who have sexually abused children into the community does not protect the public because once a priest is dismissed from the clerical state, nobody has authority over him and there is nothing to prevent him from continuing to abuse children. Father Doyle said that in the United States, he has seen an increasing number of cases in which men dismissed from the priesthood for committing sexual abuse have subsequently worked in positions where they had access to children. He argued that keeping a priest in a special residence, akin to house arrest, can sometimes enable the Church to protect members of the public from clergy abuse.

The experts confirmed that there were cases in the past when offending priests were transferred to other dioceses or parishes without treatment for their sexual problems. Father Doyle described sexual dysfunction of clergy as a lifelong problem. Once an offending priest has received treatment, measures need to be taken to prevent him from re-offending. A priest found to have sexually abused a child may not be placed in ministry again. However, it is possible that a priest who has received treatment for sexual abuse will be transferred to another diocese in a position other than parish priest. Canon 241 §3 provides that “when persons seek admission after they have been dismissed from another seminary or from a religious institute, further testimony is required from the respective superior, especially regarding the cause of their dismissal or their leaving.” The problem is that if the information is strictly confidential or if it has been received in the confessional, it cannot be communicated. Father Morrissey stated that when a priest is removed from a diocese and seeks employment in another diocese, the receiving diocese may not be told the reason for the removal.

Policies and Procedures on Allegations of Sexual Abuse Against Members of the Clergy

Prior to 1987, there were no policies or procedures in the Diocese of Alexandria-Cornwall that addressed sexual abuse by members of the clergy. Bishop Eugène LaRocque testified that it became evident in 1986, when the Diocese was confronted with the Father Gilles Deslauriers matter, that the Diocese needed a formal procedure and protocol on how respond to this issue. As I discuss in detail in this chapter, Father Deslauriers was a priest in the Diocese against whom allegations were made of sexual abuse of young people in the Cornwall community. He was criminally charged by the Cornwall Police Service (CPS) and pleaded guilty in late 1986 to four counts of gross indecency. There were multiple victims.

Although there were no diocesan policies or protocols that addressed allegations of abuse by members of the clergy prior to 1987, Bishop LaRocque was aware that canon law dealt with issues of sexual abuse. He testified that there has never been a canonical prosecution dealing with sexual misconduct or clergy sexual abuse in the Diocese of Alexandria-Cornwall.

The Diocese issued a policy on clergy misdemeanours in 1987. As will be discussed, it was not an official or a formal policy. In 1992, the Diocese developed guidelines that specifically dealt with sexual abuse by priests, deacons, seminarians, and pastoral assistants, and in 1995, they were replaced with another set of guidelines. In 2003, “Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious,

Lay Employees and Volunteers” took effect in the Diocese of Alexandria-Cornwall. The 2003 guidelines, with some revisions that have been made over the years, continue to apply in the Diocese today. Bishop Paul-André Durocher stated that these guidelines require updating, which he plans to undertake after he has received the recommendations from this Inquiry.

This section describes the protocols and policies developed in the Diocese of Alexandria-Cornwall to address sexual abuse by members of the clergy.

Principles and Procedures for Clergy in Difficulty, 1987

The first protocol in the Diocese of Alexandria-Cornwall on allegations of abuse on a young person by a member of the clergy, “Principles and Procedures for Clergy in Difficulty,” was developed in 1987. Bishop LaRocque explained that in signing this document, he was approving it for use within the Diocese of Alexandria-Cornwall “as a draft.” He stated that it was replaced in 1992 by a document created by Father Denis Vaillancourt.

In the late 1980s, bishops in Ontario and other provinces of Canada were trying to develop procedures for sexual abuse by clergy, in part because of the allegations of abuse at Mount Cashel in Newfoundland, the abuse of First Nations children in residential schools, and the allegations of sexual abuse by Christian Brothers in Ontario. There were also some high-profile cases in the United States.

“Principles and Procedures for Clergy in Difficulty” stated that the Diocese was formally taking the position that clergy misdemeanours must be taken seriously. It said that clergy and Church personnel must be educated on the legal and moral aspects of indictable offences, including child abuse and teenage sexual assault, and should be aware of procedures to deal with complaints of clergy misdemeanours. It also stated that the Diocese must assume responsibility for the care of victims of clergy misdemeanours:

1. The Diocese goes on record to take matters of clergy misdemeanours seriously, out of concern for the members of the clergy as well as those affected. Before these are legal problems, they are pastoral problems.
2. Clergy and personnel are to be educated on the legal and moral aspect of indictable offenses (e.g. drunk driving, embezzlement of funds, child abuse, teenage or retarded adult sexual assault ...)
3. Clergy and personnel are to know that there is a procedure for identification, care, support and after-care.
4. Diocese takes responsibility with the clergy concerned for the care of the victims.

“Principles and Procedures for Clergy in Difficulty” stipulated that upon receiving a complaint about a clergy member, the bishop was to refer the complainant to a third party designated by the bishop. This individual, who could be a clergy member or other person in a position of trust, was to obtain information on the complaint. Upon verification of the facts, the Diocese was to support both the clergy member and the victim—to help the alleged perpetrator with his problem and the victim with his or her trauma. The Christian community, it stated, must take responsibility for re-admitting the clergy member and the victim to the community. Bishop Durocher explained that “re-admission” of a clergy member referred to re-admission to functions or duties. The document stated that “in some instances, incardination in another Diocese may be best for all concerned.” Bishop Durocher explained that another diocese might have facilities for treatment unavailable in the current ministry or might have a more suitable position for the priest. He stated that the originating diocese has no ongoing responsibility for the priest if the priest is incardinated in a new diocese.

“Principles and Procedures for Clergy in Difficulty” recommended that the following canonical and legal procedures be applied in “more serious cases,” which Bishop LaRocque testified included sexual abuse:

1. immediate suspension, which meant that the priest could no longer celebrate the sacraments
2. immediate treatment and support of the member of the clergy and victim(s)
3. plea bargaining (if necessary to avoid litigation or incarceration).

The document stated that “legal advice and assistance is available to all members of the clergy involved in criminal investigations.” Bishop LaRocque explained that only unusual or exceptional circumstances would disqualify clergy from legal assistance, as was the case with Father Gilles Deslauriers. This is discussed in fuller detail in this chapter.

“Principles and Procedures for Clergy in Difficulty” did not discuss the duty to report complaints of abuse to the Children’s Aid Society (CAS) or of contacting other civil authorities such as the police.

Proposed Procedure to Be Applied in Cases of Child Sexual Abuse by a Cleric, 1988

In April 1988, in preparation for a Canadian Conference of Catholic Bishops (CCCCB) meeting, the document “Proposed Procedure to Be Applied in Cases of Child Sexual Abuse by a Cleric” was distributed to local dioceses. The author of this document was Father Francis Morrissey, who, as mentioned, testified at this

Inquiry as an expert in canon law. He periodically provided canonical advice to the Diocese of Alexandria-Cornwall. This document was not an official CCCB document. It was circulated for information purposes only. Bishop Durocher explained that it had some persuasive value, but it was merely a proposed procedure, not binding on any dioceses. This proposed procedure was not adopted by the Diocese of Alexandria-Cornwall.

The document suggested that bishops appoint a team of competent people to handle allegations of child sexual abuse, who would report directly to the diocesan bishop. It was further recommended that the team establish a policy to deal with complaints of clergy sexual abuse, which would take into account existing Church and civil laws applicable to the territory such as reporting obligations, confidentiality, and privileged information. Once such a policy was established, it was to be communicated to clergy.

The proposed procedure indicated that the diocesan bishop should appoint one or more priests to conduct a preliminary investigation into complaints of child sexual abuse. It also stated that “suitable persons should be designated to meet with the parents, and eventually the children involved.”

It also suggested that referral centres be selected that could provide psychological testing and assessments and recommended that the diocese establish a contingency fund to cover legal, medical, and counselling expenses.

The CCCB document also suggested that as soon as a priest was accused of sexual abuse, a person designated by the bishop should meet with the parents of the alleged victim. With the parents’ consent, the alleged victim should then be interviewed by a mental health professional. If the parents did not consent to this interview, they should be advised as to where they could obtain appropriate professional counselling for their children as well as for themselves.

The document proposed that the accused cleric be given an immediate leave of absence and provided with a trial lawyer, a person other than the diocesan lawyer. It stated that a meeting could then be held with the bishop of the diocese, the diocesan lawyer, the accused priest, and the priest’s lawyer. The information discussed at such meetings would be protected by solicitor–client privilege. In my view, the bishop has responsibilities to the priest and the parishioners as well as to the alleged victims. The bishop, in my opinion, should adopt a more neutral role when dealing with the accused priest and discontinue meeting with the accused in the presence of his lawyer.

The CCCB document also stated that the accused cleric was to be provided with an appropriate place to reside pending the outcome of the investigation. It further stated that after the priest was accused of the abuse, neither the bishop nor any of the priests involved should hear his sacramental confession.

The designated priest would then conduct a preliminary inquiry on behalf of the Church. If he determined that there was reason to proceed with the case, the accused cleric would be heard.

Once the inquiry was complete, the designated priest would present a report to the bishop, stating either that there was no substance to the allegations or that this matter required further action. In the latter case, the cleric's faculties to preach and his right to hear confessions were to be immediately removed. The cleric would then be referred to a treatment centre for evaluation, and the team would decide whether the matter should be referred to a canonical penal trial.

If the matter proceeded to a canonical trial at which the cleric was found guilty, the appropriate canonical penalties would be applied.

If the sexual abuse was verified, the document recommended that the children and family involved continue to receive assistance from the Church. Any eventual return to ministry for the cleric could not be considered until after therapy and a recommendation by the team appointed by the bishop.

Criteria for Accepting Ordained Priests to the Diocese, 1989

When Eugène LaRocque was installed as Bishop of the Diocese of Alexandria in 1974, there was no screening process for priests transferring from another diocese. The only practice that existed was for the bishop to contact the superior or the bishop of the priest's former diocese.

At a September 25, 1986, Council of Priests meeting, it was decided that admission criteria for accepting candidates from other dioceses should be established. It was suggested that such work be completed by a committee.

The minutes of a March 1987 meeting of the Council of Priests indicate Father Kevin Maloney presented some criteria for accepting candidates and priests to the Diocese.

At a Council of Priests meeting on September 13, 1989, the "Criteria for accepting ordained Priests to the Diocese" were accepted. Bishop LaRocque implemented these criteria in the Diocese.

The document stated that any priest applying for a position in the Diocese should do so by letter, specifying why he was leaving his present position and the reasons he wished to join the Diocese of Alexandria-Cornwall. Moreover, the priest was to obtain a letter of recommendation from his superior, dated within six months of the application. In the case of a priest who worked in a diocese other than his own, letters of recommendation and evaluation had to be provided.

It was recommended that the applicant be interviewed by a panel of three priests selected by the bishop and that this panel provide a recommendation for

action to the bishop. If an applicant was accepted and assigned to a parish, it was on a trial basis of three months, to be reviewed by the pastor, the applicant, and the bishop or his delegate.

Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminaries, and Pastoral Assistants, 1992

Father Denis Vaillancourt, the Chancellor of the Diocese of Alexandria-Cornwall, prepared a document for the Diocese entitled “Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants.” As the document was not signed, there was some confusion about when it was officially adopted. Bishop LaRocque testified that Church officials in the Diocese regarded this document as the official guidelines for the Diocese, despite the fact that it was not signed. He claimed that he followed these guidelines as early as summer 1992. Bishop LaRocque testified that these guidelines were in effect when David Silmsen contacted the Church and alleged that a priest in the Diocese, Father Charles MacDonald, had abused him. This is discussed in further detail in this chapter.

These guidelines remained in effect in the Diocese until 1995.

The guidelines stated that the person designated by the bishop was to meet with the complainant within forty-eight hours of receiving a complaint of sexual abuse. He was to assess the seriousness of the complaint and verify if the alleged victim was a minor. A minor was defined as an individual under sixteen years old. The designated person was to “ascertain that there are facts which support a ‘reasonable motive’ for the complainant according to the laws on the protection of youth (Children’s Aid Society).”

The designated person was to inform the complainant that there would be a meeting with the suspected aggressor, the advisory committee would study the complaint, and if the alleged victim was a minor, the CAS would be informed of the offence. Bishop LaRocque testified that it was unclear whether reporting was triggered in circumstances in which the alleged victim was a minor at the time of the offence but not a minor at the time of the complaint.

The designated person was to open a file on the case, record the events in chronological order, and write a report on the meeting with the complainant. He was also to discuss the contents of this meeting with the bishop.

The designated person was also to meet with the accused priest within forty-eight hours of the complaint. He was to notify him of the complaint, reassure him that his rights would be respected, and offer him legal and psychological support. If the alleged victim was a minor, the accused priest was to be informed that the case would be submitted to the CAS. The alleged perpetrator was also to be instructed not to have any contact with the complainant, the victim,

or the victim's family, and if necessary, require that he voluntarily resign from his ministry.

The designated person was to file a report of the meeting with the accused priest and inform the bishop of this meeting.

After the above steps had been completed, the designated person was to convene a meeting with the advisory committee as soon as possible so that the committee could assess the value of the "reasonable motive." The minutes of the meeting were to be recorded. The bishop was to be informed of this meeting.

After the above steps had been followed, if necessary, the designated person was to notify the CAS of the case and follow its directives. The complainant and the suspected aggressor were to be informed of the measures taken. The guidelines stated that if the CAS was not notified of the case, the designated person was to meet with the complainant, explain the reasons for this decision, and inform the complainant of his right to bring the case to the attention of the CAS.

The guidelines stated that at this stage, "If the situation warrants it because the events have become public, because of the trial or that it is a case for the CAS, the Bishop will order the person concerned to leave his post." It is important to note that this does not cover situations such as those encountered by Mr. Silmsner, when an individual makes a complaint to the Diocese regarding sexual abuse allegations and the accusations are not yet public. Bishop LaRocque stated in his testimony that the bishop could temporarily suspend the faculties of the accused priest if he was of the view that there was a risk to the complainant, the alleged aggressor, or others.

Bishop LaRocque initially took the position when he testified at the Inquiry that if the policy was not followed, it was not his responsibility; rather it was the responsibility of the designated person. However, he later acknowledged in his evidence that it was in fact his responsibility to ensure the protocol was adhered to. He acknowledged that he should have monitored situations involving clergy sexual abuse in the Diocese much more closely. This is discussed further in this chapter.

Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians, and Pastoral Assistants, 1995

In June 1995, Bishop LaRocque signed the "Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants." These guidelines were a protocol created by the Diocese of Alexandria-Cornwall after consultation with the Children's Aid Society, the Ontario Provincial Police, and the Cornwall Police Service. The 1995 guidelines replaced the previous policy created by Father Denis Vaillancourt.

The guidelines developed by Father Vaillancourt in the early 1990s had contained more detail than the 1995 guidelines. Bishop Durocher explained that the CAS and the police believed they should handle investigations without the involvement of the Diocese, and therefore the 1995 guidelines simply set out that the Diocese should make a report to the CAS or police and then wait for the outcome of the investigation. He testified that this might have been necessary, given public perception of the Diocese at the time.

The previous guidelines prepared by Father Vaillancourt stated that if the offence involved a minor, after consultation with the advisory committee, the designated person was to make a report to the CAS. These guidelines made no mention of reporting to the police. In contrast, the 1995 guidelines stated that the first person who received a complaint was to report it to the police immediately or to the CAS if the offence involved a minor. Bishop LaRocque agreed that this protocol required reporting of historical sexual abuse if the alleged victim was under sixteen years old at the time of the offence. That was the agreement reached with the CAS at the time.

The guidelines stated that after a report is made to the CAS or police, the bishop of the Diocese is to be informed of the complaint. The next step was an investigation by either the CAS or the police. Bishop LaRocque stated that at this time an internal Church investigation could also be undertaken by the person designated by the bishop.

The guidelines say:

The Bishop waits for the investigation to take place. If the situation warrants it (because there is a risk to the alleged aggressor, or the possibility of a risk to other members of the community, because the events have become public, because charges will be laid, because a trial will take place) the Bishop removes the suspected aggressor from Church duties.

The final step of the process of dealing with the complaint is to offer help and support to the alleged victim and his family.

Protocol for Priests Who Are the Subject Matter of Criminal Proceedings or Civil Litigations, 1996

Bishop LaRocque signed the diocesan policy “Protocol for priests who are the subject matter of criminal proceedings or civil litigations” in June 1996.

These guidelines were in effect when Bishop Durocher was installed in the Diocese in 2002. This protocol remains in force in the Diocese today. It sets out the various protections available to an accused priest and the procedures to

be followed if a priest is the subject of an allegation that results in a criminal proceeding or civil litigation.

According to the protocol, an accused priest has the right to seek legal counsel before responding to investigating authorities, both civil and religious. The priest is entitled to choose his legal counsel, and the cost of his legal counsel is to be borne by the Diocese, regardless of whether it is a criminal allegation or a civil lawsuit. The protocol states that a rationale for paying an accused priest's legal fees is the presumption of innocence. Bishop LaRocque explained that the reason the Church, an employer, pays the legal fees for the priest, an employee, is that members of the clergy do not have the funds to retain legal counsel. He stated that the protocol protects priests through an entire criminal law process, including all appeals. In my view, for funding appeals, the Diocese should require priests who wish to receive such funding to submit a written request in which reasons for the appeal are delineated. The Diocese should then review and assess the request to decide whether such funding should be provided. This will ensure that recourse to the courts is not unnecessarily drawn out, to enable the alleged victims to attain closure.

The protocol directs that a priest accused of an indictable offence be removed from his position and placed on a leave of absence for six months if one or more of the following conditions are present:

- a) risk to the alleged aggressor;
- b) possibility of risk to members of the community;
- c) because the events have become public;
- d) because charges will be laid;
- e) because a trial will take place.

According to the protocol, after a six-month temporary removal from ministry, the removal becomes permanent. Bishop Durocher testified that in his view, this provision contravenes canon law. He explained that a parish priest cannot simply be removed from his position. There is a procedure set out in canon law that must be followed and, as a result, Bishop Durocher was uncertain how this could be put into effect.

The protocol states that the accused priest will be provided with reasonable lodging and the necessary funds to provide such lodging and food.

The protocol directs that an accused priest who is asked to vacate his assignment will receive his full salary, car allowance, and benefits until the completion of all legal processes, including appeals. It also states that the Diocese will pay for the priest's therapy.

Bishop Durocher stated that there are cases in which canon law provides for a canonical penal process, which could result in a penalty. However, he explained

that because penal processes are extremely rare, for all intents and purposes, the bishop or the superior of a priest belonging to a religious order decides the appropriate penalties to be imposed. As mentioned earlier, the 1995 “Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants” state that there are certain circumstances that require a priest to be removed from his position and placed on a leave of absence.

The protocol states that priests who are indirectly involved in these matters will also be provided with legal representation. According to the provision: “Legal assistance should be provided to other priests who are interviewed by legitimate investigating authorities both civil and religious; the costs will be paid by the Diocese.”

Policy and Procedures for Screening Church Personnel, 2000–2002

In 2000, the Diocese of Alexandria-Cornwall drafted a screening policy that applied to all diocesan lay employees, clergy, seminarians, religious brothers and sisters, and volunteers. These individuals were required to submit a completed background check form. Employment, volunteer work, and ministry were contingent on a satisfactory investigation, updated every seven years. A copy of the policy and procedure for implementation was to be distributed to all parishes and diocesan entities.

The designated person in each diocesan entity was instructed to forward to the Chancellor’s Office a completed background check for each prospective or existing employee, volunteer, or religious person. A record of all personnel was to be retained.

Under the heading “Minimum Standards of Good Moral Conduct,” the policy states:

Anyone who has been found guilty of, regardless of adjudication, or entered a plea of guilty to, any offense prohibited under any of the following may be excluded from employment or volunteer work that places them in regular contact with children, fragile elderly or the physically or mentally challenged.

- a) relating to abuse or neglect against a child
- b) relating to abuse, neglect or exploitation of aged or disabled persons

...

- i) relating to child abuse ...

On January 1, 2002, the Diocese revised its screening policy to require all individuals involved in high-risk positions to provide personal information and references and to complete the necessary forms for criminal record verification.

Creation of the Ad Hoc Committee on Safeguarding Against Abuse, 2002

When Paul-André Durocher became the Bishop of the Diocese of Alexandria-Cornwall in 2002, one of the first things he did was set up the Ad Hoc Committee on Safeguarding Against Abuse. This committee consisted of specialists who were to advise Bishop Durocher on the implementation of policies to help safeguard children and other vulnerable parishioners against sexual abuse. The Bishop issued a press release announcing the first meeting of this diocesan committee, which was held on August 15, 2002.

Bishop Durocher hired Ronald Bisson, a professional facilitator from Ottawa, to assist this process. The Bishop asked Father Everett MacNeil, a priest from the Diocese of Antigonish and then the bishop's delegate for the Archdiocese of Ottawa, to act as his delegate. Father MacNeil had related experience as a member of the Winter Commission in Newfoundland.

The mandate of the Ad Hoc Committee stated that it would be composed of a dozen members of different ages, genders, professions, and backgrounds. Along with Ronald Bisson and Father MacNeil, the members were Richard Abell, the executive director of the Children's Aid Society; Frances Lafave, administrator of the Glengarry, Stormont and Dundas Lodge, one of Cornwall's major senior homes; Lucie Lévesque, a teacher involved in one of the parishes; Chris McDonell, a retired police officer; Kevin Maloney, the Vicar General of the Diocese of Alexandria-Cornwall; Ron McClelland, a local lawyer; Johneen Rennie, a former administrator of a local senior's home; Gérald Samson, a former superintendent of education for the public board; Judy Schaeffer, a mother active in one of the parishes; and Robert Smith, director of the Children's Treatment Centre.

The mandate contained a list of suggestions for the committee to follow in order to meet its objective, which was "to advise the Bishop on formulating and implementing diocesan policy which will help safeguard children and other vulnerable parishioners against possible sexual abuse by clergy, lay staff and parish volunteers." The first item was "learning from the history of the Church's response to allegations of sexual abuse by members of the clergy." Bishop Durocher wanted the committee to reflect on the history of the Diocese's response to allegations, how these responses were perceived, and the results of these responses. Another suggestion for members of the Ad Hoc Committee was to become familiar with the recommendations contained in *From Pain to Hope*. All the members were given copies of the document. A further suggestion was to study "recent developments in the field."

Another proposal was to receive "suggestions from concerned groups and individuals relating to the mandate of the committee." The Diocese published the "Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians

and Pastoral Assistants” and the “Protocol for priests who are the subject matter of criminal proceedings or civil litigations” in newspapers such as the Cornwall *Standard-Freeholder* and French newspaper *le Journal de Cornwall* and asked for feedback on them. Bishop Durocher testified that although the Diocese received some responses, it “wasn’t overwhelming.”

Bishop Durocher released on August 19, 2002, a press release entitled “First meeting of a diocesan committee on safeguarding against abuse” in which members of this committee were identified to the public.

Bishop Durocher told the committee that the current diocesan policy on clergy sexual abuse was deficient and that he wanted the committee to recommend ways that *From Pain to Hope* could be applied in the Diocese. The committee’s response to *From Pain to Hope* was positive. However, in the discussion of this document, a few concerns were raised, including what should be done to protect innocent priests who are falsely accused, what should be done if doubt persists in the public’s mind after an accused priest is acquitted of charges, and whether the Church should pursue an investigation based on canon law when a case is unresolved due to “legal technicalities.” In regard to the last point, it was stated that the Church would be leery of pursuing an investigation when the criminal justice system had not come to a conclusion.

The committee received and studied a second draft of the new policy “Diocesan Guidelines and Policy on Allegations of Sexual Abuse of Children by Clergy, Religious, Lay Employees and Volunteers” dated October 23, 2002.

The Report of the Ad Hoc Committee on Safeguarding Against Sexual Abuse was submitted to Bishop Durocher on December 17, 2002. It set out draft guidelines entitled “Diocesan Guidelines on Reporting and Dealing with Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers,” which were subsequently adopted with some revisions in 2003.

The Ad Hoc Committee Report also set out a “Framework of a Plan for Safeguarding against Sexual Abuse and Sexual Assault.” The aim was to “develop an education, training and prevention plan for safeguarding against sexual abuse and sexual assault in the Diocese of Alexandria-Cornwall.” It stated that the plan should meet the following six objectives:

1. To establish a mandatory ongoing education program for the clergy, members of religious orders, lay employees and volunteers regarding their responsibilities, obligations and rights on issues pertaining to sexual abuse and sexual assault.
2. To raise awareness within the diocesan church community, particularly with parents and children, in order to promote positive attitudes concerning healthy sexuality and good relationships.

3. To implement the Ontario Screening Initiative.
4. To assist the Bishop in developing a series of positive messages that will be heard as the voice of the Church in the community.
5. To develop effective communications procedures.
6. To identify and make available the human, technological and material resources required to support an implementation plan.

There was also a recommendation that the bishop annually establish a review committee to study the effectiveness of the diocesan guidelines and recommend improvements. The Report also contained a number of recommendations for follow-up:

In order to pursue the work initiated in August 2002, the Ad Hoc Committee recommends the following:

1. That consideration be given to identifying more clearly the “volunteer” category.
2. That approaches be developed to implement a healing process within the diocese through programs or sessions for various constituencies and for the community at large.
3. That the diocese develops a bank of local resources that could be called upon on short notice in matters relating to these guidelines.
4. Should a victim request a confidentiality agreement, that it be absolutely clear that it is being done at the request of the victim, represented by independent legal counsel, and that it in no way attempts to limit any rights of the victim flowing from criminal law.
5. That appropriate forms be drawn up relating to reporting and record keeping pertaining to actions taken in following the Guidelines.
6. That consideration be given for developing distinct procedures for religious, lay employees and volunteers.
7. That a victim be a member of the Committee for Victims.

In my view, the Diocese should adopt a policy that confidentiality agreements should not be solicited from a victim or alleged victim at any time.

The Report also set out draft guidelines that were to apply to all clergy, employees, and volunteers in the Diocese.

Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers, 2003

Bishop Durocher circulated the draft guidelines submitted by the Ad Hoc Committee on Safeguarding Against Sexual Abuse to different parishes to elicit feedback before making them official. After receiving comments and making

appropriate revisions, the “Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees and Volunteers” became effective on July 1, 2003. They replaced the 1995 guidelines and are the guidelines currently in effect in the Diocese of Alexandria-Cornwall.

The guidelines state that clergy, Church employees, or volunteers who become aware of an allegation of child sexual abuse must report it to the bishop’s delegate and to the CAS. The bishop’s delegate will also contact the CAS regarding the allegation. Furthermore, if the allegation concerns historical abuse of a child, the bishop’s delegate will inform the CAS.

The guidelines state that the bishop’s delegate will contact the complainant immediately to verify the allegation, advise him of his right to contact the police, and inform the complainant that the delegate has an obligation to report to the CAS if the allegation involves a child.

Upon verifying the allegation, the bishop’s delegate is to immediately inform the bishop and to convene a meeting of the advisory committee within twenty-four hours. The advisory committee will direct and evaluate the actions of the bishop’s delegate. One of the first issues to be considered by the advisory committee is the care that is to be provided to the victim. The guidelines state that referral will be made to the victims’ care committee in appropriate cases, which is defined as “[a] standing, multidisciplinary committee set up by the Bishop to see that individualized support is available to the victim, both during and after the investigative process, upon referral by the Advisory Committee.” According to the guidelines, the victims’ care committee may pay for counselling or therapy. They also state that if charges have been laid or an investigation by the CAS or the police is ongoing, no meeting will be held with the victim unless proper authorization is obtained from the police or judicial authorities.

The 2003 guidelines stipulate that if charges are laid, “the Bishop will immediately place the accused on a leave of absence from parish ministry or from other Church-related responsibilities, brief the Delegate and the Diocesan Spokesperson, and call a meeting to advise the parish and community.”

If the matter is being pursued by the CAS and/or police, the delegate will not undertake any investigation “but will remain vigilant and will maintain appropriate ongoing communication with the civil authorities.”

If the advisory committee deems the innocence of the accused to remain in question after the conclusion of the police investigation, it can direct the delegate to investigate the allegations and prepare a report for the committee, which will make recommendations to the bishop. The guidelines state that if there is no police investigation of a complaint of a sexual assault of an adult, the delegate must investigate

the complaint. Bishop Durocher explained that if the matter involves a child, the CAS and/or police will be involved in an investigation. However, if the case involves an adult, it is possible for the complainant to refuse to have the police involved. Bishop Durocher stated that in such a situation, the delegate must undertake an investigation and report his findings to the advisory committee, which will make recommendations to the bishop on how to proceed in regard to the complaint.

If either the judicial process or the advisory committee determines that an offence has been committed, the committee "will make recommendations to the Bishop on issues of censure, treatment, and future placement of the accused and ongoing care of the victim." If a judicial process or the advisory committee concludes that no offence has been committed, the committee brings the case to a close, and if the accused had been placed on a leave of absence, he will be permitted to resume his duties.

The bishop's delegate is responsible for ensuring that contact is maintained with civil institutions so that the advisory committee is aware of the reasons for decisions made by civil authorities. If the court process ends with a clear and unambiguous acquittal, this will be taken to mean that no offence has been committed. Bishop Durocher testified that if the court process does not end with a clear, unequivocal statement, the advisory committee must continue working on the case.

Throughout the process, the advisory committee makes recommendations to and oversees decisions made by the bishop with respect to pastoral care of parishioners, information provided to the clergy and public, and the status of any criminal charges or civil actions.

The guidelines state under "accountability" that the bishop will annually establish a review committee to study the effectiveness of the guidelines. The bishop will make the results available to the public. The delegate will maintain a written record of allegations received, meetings, and the outcomes of proceedings. Bishop Durocher explained that one of the reasons for establishing an advisory committee was to create a structure of accountability.

The guidelines do not discuss the specifics of civil proceedings. However, Bishop Durocher testified that if he received a statement of claim containing an allegation of historical sexual abuse but no allegation had been made to the bishop's delegate and there were no CAS or criminal investigations, the advisory committee would also be asked to examine the situation.

The 1996 "Protocol for priests who are the subject matter of criminal proceedings or civil litigation" continues to apply regarding issues not addressed in the 2003 guidelines. Bishop Durocher stated that if there are any conflicts between the 1996 protocol and the 2003 guidelines, the latter prevail.

Screening Policy for the Diocese of Alexandria-Cornwall, 2004

The Diocese's screening policy was amended in January 2004 to include broader screening practices. In addition to police record checks of volunteers, the Diocese conducts reference checks and has an interview process. The policy distinguishes between high-, medium- and low-risk volunteer positions.

In each parish, there is a parish leadership team that is responsible for implementation of the policy. The team identifies high-risk positions and assesses whether the risk can be lowered. A high-risk position would be, for example, leading Sunday school for children. The risk could be lowered by ensuring that two or three adults are always present during Sunday school.

This policy sets out the following steps with respect to screening, among others:

1. providing a written description of the services offered in the Diocese
2. determining and reducing risks levels with respect to the services offered by the Diocese
3. making available to recruits the description of the service to be rendered and its rated level of risk
4. screening for high-risk positions by
 - a) obtaining information about the candidate
 - b) interviewing the candidate
 - c) verifying a candidate's references
 - d) conducting a police record verification
 - e) providing orientation and training
 - f) ensuring supervision and evaluation
 - g) obtaining feedback from participants.

Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers, 2005

After the creation of the 2003 guidelines, Catholic Mutual Canada, the insurer for the Diocese of Alexandria-Cornwall offered to conduct professional audits of all policies in each Ontario diocese. In January 2005, the insurers met with members of the Diocese's advisory committee to review the 2003 "Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers." They conducted an analysis of the guidelines and procedures for allegations of sexual misconduct. In 2005, the Diocese updated the 2003 guidelines.

Catholic Mutual Canada's review report recommended that the guidelines be modified to include information regarding what procedures should be followed

when allegations of sexual abuse are raised anonymously or by someone other than the alleged victim. In response, the relevant section of the guidelines was amended to read:

If the complainant is not himself/herself the presumed victim, the delegate will attempt to contact the presumed victim in order to verify the allegation and advise him/her of his/her right to contact the police. The delegate will attempt to do so even in the case of anonymous allegations.

Further, a distinction needed to be made between an allegation of criminal activity and an allegation of consensual activity involving an adult. As recommended in the review, the definition of sexual assault was changed to read: "Contacts or interactions of a sexual nature between adults with or without mutual consent where a person deems himself or herself to have been victimized."

The review recommended that a written policy be created regarding communication with the media on sexual misconduct. It proposed that the leadership role of the bishop in the recovery process be included in this communication policy. Bishop Durocher stated that the Diocese has not yet developed a written communication policy.

Changes other than those recommended in the 2005 review were also included in the new version of the guidelines. A provision requiring the bishop's delegate to inform the accused of the allegation and record his response was added to the guidelines.

The following provision was also added to the guidelines:

In the case of the sexual abuse of a minor by a priest or deacon, if the presumed victim is under the age of 28 years old at the moment the complaint is made, the Bishop will also initiate a canonical investigation according to Canon 1717 of the Code of Canon Law and eventually refer the case to the Congregation for the Doctrine of the Faith.

This change was made to reflect the fact that in 2001 the Pope released norms stating that all cases of sexual abuse of minors were to be reported to the Congregation for the Doctrine of the Faith. These norms set out that offences reserved to the Congregation for the Doctrine of the Faith have a ten-year limitation period, meaning that after ten years have passed, the offence cannot be dealt with through a canonical process. However, the norms also state that in cases involving the sexual abuse of a minor, the limitation period does not begin to run until the minor reaches the age of eighteen. Therefore, if the complaint is

made when the person is not yet twenty-eight years old, the bishop must initiate an investigation and refer the matter to the Congregation for the Doctrine of the Faith.

The accountability section was changed to provide that the guidelines will be reviewed by an independent audit every second year. This replaced the review committee that was mandated in the 2003 guidelines with an independent audit.

Catholic Mutual's review report also recommended that any employee who has a role that falls within the definition of a high-level volunteer should be subject to a police check and detailed employment application process. It was also suggested that a protocol be established to audit all facets of the volunteer management process, and that this protocol apply to any diocesan employees who have interaction with any vulnerable person or group designated as "high" in relationship to volunteer grading.

The report also recommended that the Diocese amend its policy to make clear that it addresses employees as well as volunteers.

The insurer's review report further recommended that the Diocese create a written policy which requires the bishop or religious superior to disclose all information concerning sexual misconduct of any priest seeking to be transferred to the Diocese or seeking faculties in the Diocese.

The amended guidelines were made effective in September 2005. There was no audit conducted in 2007. Bishop Durocher stated that this audit did not take place because he was awaiting the findings and recommendations of this Inquiry.

Orientations Issued by the Canadian Conference of Catholic Bishops With Respect to Sexual Abuse of Minors, 2007

In 2006, the Canadian Conference of Catholic Bishops (CCCCB) initiated work on a document regarding sexual abuse of minors, which was adopted at an October 2007 plenary meeting. Bishop Durocher explained that this document did not have a large effect on the diocesan guidelines, as many of the issues had already been addressed in the 2005 guidelines.

The document has a section entitled "A Responsibility of the Individual Bishop." It reaffirmed the responsibility of each bishop to establish a protocol in each diocese.

The CCCC document stressed, "The protocol should recognize that the responsibility of the Diocese is primarily pastoral and that under no circumstances are its pastoral responsibilities to be overcome by its concerns about the possibility of forfeiting insurance coverage."

Bishop Durocher testified that the Diocese would be reviewing its documentation in light of this document and any recommendations from this Inquiry. Prevention and care were issues introduced in *From Pain to Hope*.

The Bishop stated that the Diocese has already started work on policies regarding screening. Bishop Durocher stated that the Diocese will need to develop a broader, revamped policy.

Conclusion

Bishop LaRocque testified that the Roman Catholic Diocese is an important institution in the Cornwall community. He agreed that it was important for the community as a whole that the institution be perceived as credible and forthright. Abuse allegations, if not handled appropriately by an institution, can affect the community at large and the Church in a detrimental way. It can also be a breeding ground for rumour and innuendo.

Bishop LaRocque stated that he, as Bishop, had ultimate authority in the Diocese.

Bishop LaRocque published an annual compendium of diocesan policies when he was the Bishop of the Diocese of Alexandria-Cornwall. In looking back on the evolution of protocols, both internal and inter-agency, Bishop LaRocque acknowledged that some of the practices and the implementation of these protocols could have been done differently. This is discussed in further detail in this chapter.

Bishop Durocher stated that a bishop can adjust the policies that apply in his diocese at will. As he said in his testimony, "Personally, I feel that it's too great a power for bishops but that's an issue to be debated within canon law."

The following sections discuss the institutional response of the Diocese of Alexandria-Cornwall to allegations of sexual abuse of young persons by members of the clergy.

Father Gilles Deslauriers

Shortly after Eugène LaRocque became the Bishop of the Diocese of Alexandria in 1974, he discerned tension between Father Gilles Deslauriers and some priests in the Diocese. Father Deslauriers was perceived by some of the clergy as controlling and manipulative. At the time, Father Deslauriers was at two parishes; he was the administrator of Green Valley Parish and was responsible for youth at Sacré-Coeur Parish in Alexandria. In November 1974, Bishop LaRocque wrote to Father Deslauriers instructing him to stop interfering in the affairs of Sacré-Coeur Parish, to allow Fathers Raoul Poirier and Denis Vaillancourt to perform matters within their responsibilities. He asked Father Deslauriers to end his involvement in this parish.

Father Deslauriers had been ordained by Bishop Adolphe Proulx in 1970. After his ordination, the priest was in contact with students and youths. Bishop Proulx appointed Father Deslauriers the pastor responsible for French-speaking

youth in Alexandria in 1971 and also gave him responsibilities teaching religion in the French sector of Glengarry District High School. Two years later, Father Deslauriers was appointed pastor for Rouleau School in Alexandria.

His contact with children and youth continued when Bishop LaRocque succeeded Bishop Proulx in the Diocese of Alexandria. In 1978, Father Deslauriers became responsible for apostolate with francophone youth in the Diocese. That year, Bishop LaRocque also named Father Deslauriers full-time chaplain at La Citadelle High School in Cornwall.

The appointment at La Citadelle High School, a French public secondary school, was a result of the request of Principal Jeannine Séguin. Ms Séguin lived with Bishop Proulx's sister in the Bishop's cottage. It is noteworthy that her suggestion that a Catholic priest be installed in a French public school as chaplain, with a salary to be paid by the school, was considered out of the ordinary by Bishop LaRocque:

... [C]'était inouï de penser d'un école publique de langue française mettrait un prêtre catholique comme aumônier et paierait son salaire. Je n'avais jamais entendu parler de cela.

Although some high schools had chaplains, the chaplains did not have offices. They were seldom at the schools other than for graduation or if a serious problem emerged and did not receive salaries from the school.

At the time Father Deslauriers became the full-time chaplain at La Citadelle High School, Bishop LaRocque wrote a pastoral letter to commemorate the twenty-fifth anniversary of his own ordination as a priest. It was directed at young people. The pastoral letter discussed the Roman Catholic Church teaching that love comes from practising chastity and control of sexuality:

... [J]'avais écrit la lettre pour essayer de rehausser la lettre de l'encyclique de Paul VI sur la contraception et l'idée de l'Église que l'amour vient en pratiquant la chasteté, le contrôle de notre sexualité par amour et non par peur. Et je l'avais écrite directement pour essayer d'aider aux jeunes.

In a letter to Bishop LaRocque in 1981, Father Deslauriers informed the Bishop that he had never distributed the pastoral letter to students at La Citadelle as he considered the message indigestible and unacceptable:

... [J]e voudrais vous dire que votre lettre past. sur la chasteté fut pour moi inacceptable. Elle reflétait un po pourri [sic] d'idées saugrenues et

non digestibles ... [V]oilà pourquoi je me suis permis de ne pas la distribuer aux étudiants de la Citadelle.

Bishop LaRocque was very disappointed that Father Deslauriers had not circulated the pastoral letter to the students and was upset by the tone of the priest's correspondence to him.

Parishioners Raise Questionable Behaviour of Father Deslauriers With the Bishop, Claude Thibault Meets With Bishop LaRocque

Claude Thibault was born and raised in Cornwall. His parents were devout Roman Catholics. He served as an altar boy and a reader during mass and was involved in a youth group at his parish. In high school he was on the Pastoral Committee, which organized prayer sessions, masses, and other religious activities. As he said at the Inquiry, religion was an integral part of his life.

Claude Thibault was in grade 12 at La Citadelle High School when Father Gilles Deslauriers became chaplain of the French school. Father Deslauriers was in charge of the Pastoral Committee and organized prayer services and other activities for the high school students.

Father Deslauriers organized a spiritual movement called "R3" after he became the school chaplain. "R" stood for "rencontre," which means "meeting." As Bishop LaRocque explained, the "3" signified meeting with God, others, and oneself. There were monthly meetings and sometimes weekend retreats at which the students participated in prayer, celebrations, and sometimes confession.

Claude Thibault became very involved in the R3 movement when he was a grade 12 student at La Citadelle. Through the activities of R3, Father Deslauriers quickly became a "good friend," a "mentor," and a "confidant" for Claude Thibault. As Claude Thibault said in his evidence, "R3 really created the opportunity to get to know" the priest. Father Deslauriers told the student that he had a doctoral degree in psychology, which was untrue. Claude Thibault, who later became a priest, testified that the information about Father Deslauriers' doctoral degree was false. He considered Father Deslauriers his spiritual advisor.

Claude Thibault periodically sought advice from the priest. It was at one of these counselling sessions, said Claude Thibault, that Father Deslauriers began to sexually abuse him. He testified that he was abused by Father Deslauriers several times. It was his recollection that this took place between approximately January 1978 and September 1979. Although the grooming took place at La Citadelle High School, the abuse occurred at St. John Bosco rectory, where Father Deslauriers was a priest in residence. The abuse generally occurred in the evening. Claude Thibault, like many victims of abuse, did not disclose at that time the sexual acts committed on him by the priest.

But in August 1979, when Claude Thibault was at a retreat in Trois-Rivières, Quebec, he disclosed the sexual acts of the priest to a lay person in charge of the centre. Father Deslauriers did not attend this retreat. Nineteen-year-old Claude Thibault told this woman, Rose-Annette Vachon, that he was confused about the “therapy” administered to him by Father Deslauriers. She learned that the sexual contact perpetrated on him had been presented by the priest as “therapy.” Her reaction was one of surprise. She escorted Claude Thibault to a priest at the retreat centre. Father Thibault explained at the Inquiry the reason why he trusted Father Deslauriers despite the fact that the sexual behaviour, the “so-called therapy,” did not “feel right”:

... I believe that my involvement with the Church, my faith and all of that was very instrumental ... with the abuse itself. One of the reasons why—like, there was a lot of confusion over this abuse, this so-called therapy. In my mind, it never felt right, but it was somebody that, as he had said and falsely said, had a degree in psychology, and he spoke at different times that his thesis was something regarding sexual problems or deviants of whatever. So he was, in my mind, a master of that, but he was also a priest.

And I really—I wouldn’t say—I knew a number of priests so I wouldn’t say that I believed that a priest could do no wrong. I think I had a good understanding at that point that priests are human and can make mistakes but I constantly would come back to the fact, like, well, he knows what he’s doing, even though it doesn’t feel right. It doesn’t feel right with my religious values; what I had been taught; what I had grown up with. He is a priest. So there has got to be something that I’m missing that he sees and I—he had brainwashed me, I would say, so much with having to trust him that that is exactly what I did.

Claude Thibault spoke to Father Germain Coté, who worked at the retreat centre. In Father Coté’s office, he disclosed the “therapy” administered by Father Deslauriers. Claude said he felt guilty for participating in these acts. Claude Thibault testified that he is quite certain that the disclosure was “in the context of confession.” Father Coté’s immediate reaction was that this behaviour was inappropriate and did not “make sense.” He encouraged Claude to approach Father Deslauriers and make it clear to the priest that he wanted this “therapy” to stop. Claude Thibault testified that he does not recall Father Coté recommending that he contact the Bishop or the police or the Children’s Aid Society (CAS).

Claude Thibault decided to follow Father Coté's advice. After the spiritual retreat at Trois-Rivières, he met with Father Deslauriers and asked the priest to stop this behaviour. He testified that Father Deslauriers complied.

In 1981, Claude Thibault entered Saint Paul Seminary after completing three years at the University of Ottawa. He disclosed the abuse that had been perpetrated on him by Father Deslauriers to a friend at the seminary, who commented that there were likely to be other victims. His friend helped him to realize the control Father Deslauriers had over him and he began to understand that the sexual acts were without question inappropriate. This had a significant impact on Claude Thibault. He became angry and began to rebel against persons connected with the Diocese and generally with people in positions of authority. This behaviour had an adverse effect on his studies at Saint Paul Seminary and he received a poor evaluation from the rector in his second year.

Claude Thibault was concerned and decided to arrange a meeting with Bishop LaRocque.

Claude Thibault knew Father Deslauriers was manipulative and did not tell the truth and therefore was very worried that the priest who had sexually abused him would make negative and false comments about him to the Bishop. He thought that Bishop LaRocque trusted and highly respected Father Deslauriers. The theology student wanted the Bishop to know that his relationship with Father Deslauriers was poor. He sought the Bishop's understanding and support.

The meeting took place in Bishop LaRocque's office. Claude Thibault told the Bishop that he had a strained and difficult relationship with Father Gilles Deslauriers; the priest had not been "true" with Claude, and he was controlling and played games. Claude Thibault testified that he was "trying to open a door" because he "had a desire to go further eventually" and disclose the sexual abuse to Bishop LaRocque. But instead the Bishop chastised Claude Thibault for making these statements and said, "Attention; c'est des grosses accusations," which translates as "Be careful; those are grave accusations." This was a very unfortunate response. As Claude Thibault said, the Bishop's "response closed the door" to the "possibility" of revealing in the future the sexual abuse perpetrated on him by Father Deslauriers.

After completing his studies at the seminary, Claude Thibault had a pastoral internship in 1984 and 1985 at St. Columban's Parish in Cornwall. His spiritual advisor at that time was Sister Myrna Ladouceur of the Soeurs du Sacré-Coeur in Ottawa. Although he did not disclose the sexual abuse, Claude Thibault told Sister Ladouceur that Father Deslauriers lied, was manipulative, and abused his authority:

... I started talking about my relationship with Father Gilles since I had known him and different difficulties that I had had with him in the way he directed me and the control he had.

I did not at first speak to her about the so-called therapy or the sexual abuse, but I spoke about the lies that I had endured and the manipulation, other forms of abuse, abuse of authority.

Sister Ladouceur encouraged Claude Thibault to confront Father Deslauriers with these issues and to convey the impact of the priest's behaviour on his life.

The meeting with Father Deslauriers took place on March 21, 1985. Claude Thibault confronted the priest with the sexual abuse, and he told Father Deslauriers that he was "taking ... back" the "control" the priest had over his life. He described the adverse effect the priest's behaviour had on him. Claude Thibault felt unburdened and for the first time out from under the control of Father Deslauriers. He no longer feared Father Deslauriers. In a mixture of French and English, he said:

I realized only afterwards it was [the] first day of spring and it was a spring day in my life. So I basically went to see him after preparing with Sister Myrna and went over a number of issues and said ... when you did this, when you said that, this is what it what it had, the impact it had on me, this is how I felt. And although I had not spoken to Sister Myrna about the sexual abuse, I also confronted him specifically on that aspect, and brought that back and told him—talked to him about the -impact that it had had on me and how I felt at that time about it.

...

Le contrôle que je t'ai donné sur ma vie, je viens le reprendre. So the control I'd given you over my life, I'm taking it back. And it really, really is what happened.

I had come to realize that he was a friend that I was terrified of, and you're not terrified of friends. So for the first time, he wasn't up there and me down here; he was at my level and it really broke the fear and it broke the control.

After listening to Claude Thibault, Father Deslauriers said he was sorry but insisted that he was merely trying to "help" him.

Claude Thibault testified that Father Deslauriers' control over him ended on March 21, 1985, when he told the priest that he was taking back control of his life.

Another parishioner in the Diocese tried to alert Bishop LaRocque to Father Deslauriers' inappropriate behaviour. A woman arranged a meeting with the Bishop in the fall of 1985 concerning her son. She said that Father Deslauriers was manipulative and asked the Bishop to take steps to ensure that her son had no

contact with this priest. This parishioner met with the Bishop a second time. Yet Bishop LaRocque did not give serious consideration to the mother's complaint. In his evidence, the Bishop recalled these visits from the woman, who was accompanied at one of them by her sister.

It was in 1986, when this parishioner told the story about her son to an ad hoc committee established by the Bishop to examine Father Deslauriers' conduct, that Bishop LaRocque realized she had tried to approach him to address the priest's behaviour. He had not given her complaints much consideration and had taken no measures to address the situation. The Bishop acknowledged in his evidence at the Inquiry that he had acted unfairly and apologized for his behaviour at the meetings with this woman:

Et ça—je voudrais peut-être profiter de—pour demander pardon de cette dame. Sa soeur moins parce que sa soeur était plutôt là pour l'accompagner, mais je crois que j'ai été très injuste envers elle.

Claude Thibault's Failed Attempt to Disclose Abuse to Bishop

Although Sister Ladouceur continued to be his spiritual advisor, it was not until the end of 1985 that Claude Thibault disclosed the sexual abuse perpetrated on him by Father Deslauriers. He told Sister Ladouceur that he knew he needed to reveal the abuse to Bishop LaRocque but felt it was "too much of a risk" to do so before his ordination. Claude Thibault thought that it was his responsibility to make this disclosure in order to protect other possible victims of Father Deslauriers. Claude Thibault, who was a deacon at this time, considered himself very vulnerable because of Father Deslauriers' "power" and "the trust that the Bishop had towards Gilles." He was fearful that the Bishop would not believe him. He told Sister Ladouceur that within six months of his ordination he would disclose the abuse to Bishop LaRocque:

... I told her that I knew by that time that I had to speak to the Bishop about it, and that I was planning to do so but I felt that I couldn't talk to him about that before my ordination.

I was deacon already at that point, and before being ordained priest, because it was too much of a risk, again, because of the power that Father Gilles, had, and the trust that the Bishop had towards Gilles.

I wasn't sure, first of all, that the Bishop would believe me; that it would be my word against Father Gilles' words, and that I was just

kind of a nobody almost. And that I—I felt that after being ordained, I probably would have a bit more leverage.

And so I said to her, I know I have to speak to him, and she agreed with that, definitely. And I said, I'm giving myself six months within my ordination. I had no idea how and when I'd do it. I was very afraid but I knew I had the responsibility to let the Bishop know what had happened.

At that point, I still did not know that there was anybody else that had suffered the same thing, but I was more and more aware that I didn't want anybody else to have to go through what I went through.

Claude Thibault was afraid that if he revealed the abuse before this time and was not believed, he would never become ordained. When he had approached Bishop LaRocque a few years earlier, the Bishop did not appear to believe him, and in fact had chastised Claude Thibault for saying that Father Deslauriers was controlling. This led Claude Thibault to conclude that the Bishop might not believe his disclosure that Father Deslauriers had sexually abused him.

Brisson Family Discloses Abuse of Benoit Brisson to Priests in the Diocese of Alexandria-Cornwall

On January 21, 1986, Father Bernard Ménard received a call from Ms Lise Brisson. She conveyed that she had something painful to share with the priest and asked to meet him. They arranged to meet two days later.

Father Claude Champagne from Ottawa contacted Father Denis Vaillancourt on January 21, 1986, to ask him if he could supervise an R3 weekend in Ottawa. Father Vaillancourt was involved in this spiritual movement at the same time as Father Deslauriers and participated in the weekend retreats for young people between the ages of seventeen and twenty-five. During the course of this telephone call, Father Champagne relayed that he had received information that Father Deslauriers had had sexual encounters with young persons. He added that this had destroyed a man's marriage. This man was Benoit Brisson. Benoit had been a student at La Citadelle High School when Father Deslauriers had been chaplain.

Father Vaillancourt met the Brisson family. Bishop LaRocque was not in the Diocese at that time but was expected to return in a few days. Hubert and Lise Brisson shared with Father Vaillancourt some details of the sexual abuse of their son, Benoit. They told Father Vaillancourt that they had also disclosed the abuse to Father Rhéal Bisaillon and had contacted Father Ménard.

This was the first time Father Vaillancourt and Father Ménard had been presented with allegations of sexual abuse by a priest in the Diocese. The clergy

were unprepared. They had no training in such matters and there was no protocol on sexual abuse at that time in the Diocese of Alexandria-Cornwall.

On January 23, 1986, Father Vaillancourt contacted Father Bisaillon, who was surprised that another priest knew of the Brisson sexual abuse. Father Bisaillon had asked the Brisson family not to discuss this issue with anyone. He wanted the Brisson family to give him time to think about how the Church would deal with this situation. To Father Vaillancourt's knowledge, Father Bisaillon did not report the allegations of abuse.

After Father Ménard spoke with the Brisson family and learned of the sexual abuse by Father Deslauriers, he met with Fathers Vaillancourt and Bisaillon at the Ste-Croix presbytery to discuss what he considered to be a serious issue. Father Ménard was saddened by this disclosure and the impact the sexual abuse had had on Benoit Brisson and his family. At this January 27, 1986, meeting, Father Bisaillon stated that three or four years earlier, Monsignor Aimé Leduc had asked him discreetly whether he had heard that Father Deslauriers was having sexual contact with young people. Father Bisaillon told Monsignor Leduc that he was not aware of this conduct.

Because Father Ménard was from a religious order and was not a priest from the Diocese, Fathers Vaillancourt and Bisaillon thought he should be the person to confront Gilles Deslauriers with the Brisson allegations of abuse. Father Ménard was not a colleague of Father Deslauriers and was considered "neutral." Father Ménard agreed to approach the priest. He considered the Brisson disclosure to be credible. He went to La Nativité Presbytery that day to speak to Father Deslauriers about the allegations. When Father Deslauriers was confronted with the Brisson disclosure of sexual assault, his response was that this was therapy for youths who lacked confidence and self-esteem. Father Ménard replied that this was a serious matter and told the priest that the Bishop should be notified immediately.

Bishop LaRocque had just returned from a two-week vacation. Father Deslauriers went to see the Bishop on January 27, 1986, the day he met with Father Ménard. He told Bishop LaRocque that he had engaged in an indiscretion, that he had touched a youth, but he insisted that it was not a serious matter. As Bishop LaRocque said:

... [I]l m'a dit qu'il avait eu l'indiscrétion de toucher le jeune par-dessus les vêtements, puis c'était vraiment rien et puis qu'il faudrait pas en faire une grosse cause.

Bishop LaRocque testified that he might have told Father Deslauriers to take a thirty-day retreat. Yet the Bishop acknowledged that there was no discussion as to when the retreat should begin or who should make the arrangements.

The Bishop appears to have accepted Father Deslauriers' explanation and took no action at the time to further investigate the matter or to determine whether any other boys or young people in the Diocese had been sexually abused by Father Deslauriers.

The following morning, Father Ménard met with the Bishop to ensure that Father Deslauriers had disclosed his sexual behaviour with Benoit Brisson. Father Ménard was disturbed about the Deslauriers situation. There was no discussion or contemplation by the Bishop at that time about suspending or removing Father Deslauriers from the ministry.

Father Gilles Deslauriers met with Ms Lise Brisson on January 28, 1986, the day after he spoke to Bishop LaRocque. The meeting took place at the Brisson home. The priest explained that he had been administering psychological therapy to her son and that his acts had been misunderstood. Father Deslauriers asked for and received forgiveness but had no repentance. Together they called Bishop LaRocque. According to Ms Brisson, Bishop LaRocque thanked her for proceeding with this issue discreetly because, he cautioned, if it became public knowledge, it would be harmful to the clergy.

Denyse Deslauriers, Benoit Brisson's former spouse, testified that she met with Father Gilles Deslauriers on January 30, 1986. Father Deslauriers had blessed their engagement, married them, and baptized their oldest child. Ms Deslauriers states that she met the priest at the presbytery. She testified that she confronted the priest and told him that he manipulated young people, that he had abused his power, and that he needed treatment. According to Denyse Deslauriers, Father Deslauriers explained that he had had a moment of weakness and he mentioned homosexuality. Ms Deslauriers also met with Father Vaillancourt on January 30, 1986. At the meeting, she described the marital problems that she and her husband had been experiencing.

Lise Brisson Contacts Father Claude Thibault

Father Claude Thibault was ordained at La Nativité Church on February 1, 1986. At the time of his ordination, he was unaware that there were other victims who had been sexually abused by Father Deslauriers. But when he returned to the Cornwall area on February 7, 1986, after a week away, his mother told him that Ms Brisson, Claude Thibault's teacher in grades 7 and 8, had called. It was on that day that Claude Thibault learned that another person had been sexually abused by the same priest, Father Deslauriers.

When Father Thibault returned Ms Brisson's telephone call that evening, she said her son, Benoit, had problems that she wished to share. Lise Brisson also mentioned that she was aware Claude Thibault had had difficulties in the past when he was in the seminary, and inquired if they had been with respect to a "certain priest." Father Thibault asked if he could come to the Brisson home.

That evening, Lise and Hubert Brisson told Claude Thibault that their son, Benoit, had been sexually abused by Father Deslauriers. Ms Brisson said she had disclosed the abuse to Fathers Vaillancourt, Bisaillon, and Ménard.

Claude Thibault had been a classmate of Benoit Brisson in grade 7 and 8, as well as in high school. He said in his evidence that they had both participated in R3 retreats and had been in “therapy” sessions with Father Deslauriers. Claude Thibault testified that they were sexually abused by this priest in the same period.

Father Thibault contacted Sister Myrna Ladouceur, his spiritual advisor. He told her that he felt he needed to reveal the sexual abuse that had been perpetrated on him to the Bishop. Sister Ladouceur encouraged him to make the disclosure to Bishop LaRocque.

Father Thibault decided to speak to Father Vaillancourt, Chancellor of the Diocese, before he disclosed the abuse by Father Deslauriers to the Bishop. As mentioned, Father Vaillancourt had been active in R3 and had worked closely with Father Deslauriers in this spiritual movement. Although Father Thibault was very nervous about the prospect of disclosing the abuse to Father Vaillancourt, he believed this priest could be trusted. Father Deslauriers at that time was a parish priest at La Nativité.

It was immediately apparent to Father Vaillancourt that Father Thibault was anxious to meet him as soon as possible. Because of the urgency of the call and Father Thibault’s mention of the Brisson family, Father Vaillancourt became concerned that there could possibly be other victims.

Father Thibault met Father Vaillancourt at St. Columban’s, the church where he had done his internship. After discussing the Benoit Brisson disclosure, Claude Thibault revealed that he, too, had been sexually abused by Father Deslauriers. Father Vaillancourt’s reaction was compassionate and supportive. Father Thibault explained that he had been very confused and uncomfortable about the sexual contact. He stated that he had gone to confession and that Father Deslauriers had absolved him. Father Vaillancourt encouraged Father Thibault to speak to the Bishop and offered to arrange the meeting.

Father Vaillancourt was worried that the abuse had been committed at La Citadelle High School and that the school board would become involved in this matter. He learned from Father Thibault that Father Deslauriers had had sexual encounters with him in the office at St. John Bosco rectory. Father Vaillancourt was the chaplain of La Citadelle at this time. He did not contact the school board or speak to staff at the school to determine if other children had been sexually abused by Father Deslauriers, the former chaplain of this high school. In the next few days, Father Vaillancourt learned that there were more victims. By February 12, 1986, Father Vaillancourt had seven names and had met with four of the alleged victims.

Father Thibault was extremely nervous when he went to see Bishop LaRocque on February 9, 1986, at the meeting that had been arranged by Father Vaillancourt. He told the Bishop that, like Benoit Brisson, he was a victim of sexual abuse committed by Father Gilles Deslauriers. He explained that Father Deslauriers had told him that the sexual contact was therapy. Father Thibault reminded Bishop LaRocque of their meeting a few years earlier, in 1983, when he had been experiencing difficulties at the seminary; that he had told the Bishop that Father Deslauriers was not truthful, was manipulative, and was playing games. He also reminded Bishop LaRocque of his response at the time. He had cautioned Claude Thibault against making such serious allegations. Father Thibault courageously told the Bishop that this response had ended the discussion and that had the Bishop been more receptive and supportive, he would probably have disclosed the sexual abuse several years earlier:

I said to him, “Now, I’m telling you it wasn’t just an impression; it was more than impression. I knew that was the truth but you responded that way and I shut up.”

I also told him that if he had listened, I probably eventually would have told him ... before ...

Claude Thibault explained to the Bishop that his difficulties in the seminary and confusion were, in large part, attributable to Father Gilles Deslauriers: “I wasn’t becoming a priest for God in God’s Church but for Gilles who was such an important person in my life.” Father Thibault testified that when he revealed that he, in essence, worshipped Father Deslauriers, Bishop LaRocque abruptly said, “That’s idolatry.” The Bishop subsequently apologized and said he did not intend to be critical and accuse Father Thibault of idolatry. Bishop LaRocque testified that Father Gilles Deslauriers had also manipulated him.

Father Thibault stated that he was thankful he was able to understand, prior to his ordination, this complex relationship with Father Deslauriers and to realize the purpose for which he should be entering the clergy: “I was happy that I had cleared that out before being ordained.”

Bishop LaRocque told the newly ordained priest that he wished he had discussed this earlier but then immediately acknowledged that had he been more receptive and listened to what Claude Thibault was telling him three years earlier, perhaps the young man would have revealed the abuse perpetrated by Father Deslauriers sooner.

Bishop LaRocque Learns There Are More Victims: Father Deslauriers Instructed to Leave Diocese

Father Vaillancourt met with Bishop LaRocque on February 12, 1986. By that time, he had the names of seven people who claimed they had been abused by Father Deslauriers and, as mentioned, he had met with four of the alleged victims. When Father Vaillancourt revealed the number of possible victims, the Bishop was shocked and said that action had to be taken.

Bishop LaRocque met with Lise Brisson the following morning, on February 13, 1986. According to Ms Brisson, the Bishop told her that Father Deslauriers was a dangerous man and that he had had the Bishop's confidence in the past, which had clearly not been deserved. Bishop LaRocque said the priest would be treated by the Church since he was a sick man. He also undertook to assist victims abused by Father Deslauriers.

Accompanied by Father Ménard, the Bishop met with Father Gilles Deslauriers at La Nativité. Bishop LaRocque confronted the priest and chastised him for asserting that he had abused only one victim, when in fact he had sexually molested many youths and young adults. He instructed Father Deslauriers to leave the Diocese of Alexandria-Cornwall immediately. He asked the priest to resign but undertook to support him in a position in another diocese, after Father Deslauriers had completed treatment with a therapist for his problems. Bishop LaRocque believed that Father Deslauriers' conduct could be changed; in the Catholic Church there is no sin that cannot be forgiven, and there can be modification in the orientation of one's life. But the Bishop testified that he now understands that professionals in the field of psychiatry do not subscribe to the view that the sexual behaviours exhibited by Father Deslauriers can necessarily be successfully treated:

... [S]elon la doctrine, il y a toujours possibilité d'une conversion. Dans l'église catholique, on croit qu'il n'y a pas de péché qui ne peut pas être pardonné où on ne peut pas changer l'orientation de notre vie. Ce n'est pas tout à fait ce que les psychiatres nous disent maintenant.

There was uneasiness among parishioners in the Diocese, as it was known that several young people had been abused. According to Father Ménard, there was a perception that the Church was not taking action because Father Deslauriers remained in the Diocese.

Bishop LaRocque and Father Ménard did not discuss whether the police or Children's Aid Society should be contacted regarding the allegations of abuse

against Father Deslauriers. Because the victims who had come forward were now in their early twenties, it may not have occurred to these religious figures that there were children possibly at risk in the community. No protocol existed in the Diocese at that time, and the clergy believed that the matter could be handled within the confines of the Roman Catholic Church. As Father Ménard said in his evidence:

... [L]'idée de l'Aide à l'enfance nous est même pas venue comme telle. Et l'idée de rendre ça public à la police ça venait pas—c'était pas dans—y avait aucun protocole à ce moment-là qui était prévu dans ce sens-là. Il n'y avait pas de tradition ou autre chose et on avait confiance encore que ça pouvait se traiter à l'intérieur des mesures dans l'église.

Father Ménard agreed that the Roman Catholic Church at times was very concerned about damaging its image in these situations. The inclination of the institution to keep such matters confidential within the confines of the Church and not discuss them in the public domain, Father Ménard said, caused damage to victims who had been sexually abused by members of the clergy. As mentioned, some bishops and priests believed in 1986 that with therapy, people such as Father Deslauriers could be successfully treated and resume their priestly duties. As Father Ménard acknowledged in his evidence, there was “some naivety to our approach in those years.”

Bishop LaRocque thinks he suggested to Father Deslauriers that he seek treatment for his sexual problems at Southdown Institute, a treatment centre established by the Bishops of Ontario. The priest refused, as therapy was not offered in the French language at that facility. There was a francophone treatment facility in Montreal, the Institut de Formation et de Rééducation, at which Jeannine Guindon, Monsignor Guindon's sister, was the director. But Father Deslauriers was also not receptive to therapy at this centre. Bishop LaRocque also discussed the re-training centre for priests in Pierrefonds, Quebec, under the direction of the former bishop of Hull, Monsignor Charbonneau, but this facility did not offer treatment or therapy for sexual problems. Father Deslauriers was resistant. It is important to note that Bishop LaRocque did not direct anyone in the Diocese to make arrangements to ensure that Father Deslauriers received treatment for his inappropriate conduct with young men.

Father Deslauriers gathered his personal belongings after the meeting with the Bishop. He was prohibited from returning to La Nativité Parish or sleeping at the presbytery. At Father Deslauriers' request, the Bishop allowed the priest to sleep at Bishop Proulx's cottage.

Bishop LaRocque testified that neither he nor other clergy in the Diocese were trained to deal with allegations of sexual abuse. Nor was there a protocol in the Diocese. The behaviour of Father Deslauriers was not reported to any outside agencies—not to the Children’s Aid Society, not to the police, and not to the school board. Nor did the Bishop conduct a formal investigation of the abuse at that time. Bishop LaRocque acknowledged that “one of [his] preoccupations” throughout the Deslauriers matter was avoiding scandal for the Diocese.

Knowledge or Suspicions of Clergy Regarding Father Deslauriers’ Inappropriate Behaviour

Prior to January 1986, comments were made by other priests suggesting that they, too, knew or suspected that Father Deslauriers was having sexual contact with young people. For example, Brother Laflamme, who was with the religious order Frères du Sacré-Coeur, was aware that young people did not want to go to confession with Father Gilles Deslauriers. To Father Vaillancourt’s knowledge, Brother Laflamme did not report this information to the Bishop.

Father Réjean Lebrun lived with Father Deslauriers at the presbytery at St. John Bosco Parish for about seven years, from 1977 to 1984. This occurred as a result of a request by Jeannine Séguin, principal of La Citadelle, after Father Deslauriers was asked to become the chaplain at the high school. Father Deslauriers was responsible for mass at St. John Bosco Parish on weekends.

Father Lebrun knew that Father Deslauriers did not have a good relationship with a number of priests in the Diocese. He was also aware that Father Deslauriers received young people in his office at night as well as on Saturdays. People often called the presbytery to speak to “Father Gilles.” Father Lebrun became irritated with the constant disruptions of their meals and the late-night calls. Benoit Brisson testified that Father Lebrun was sometimes in close proximity to the area where Father Deslauriers was molesting him. On a couple of occasions, Father Lebrun walked down the hall outside the room in which Benoit was being sexually assaulted by the priest.

Father Lebrun testified that the Diocese authorities were initially silent about the Father Deslauriers matter. Bishop LaRocque did not discuss the issue with clergy in the Diocese such as Father Lebrun. Parishioners inquired about the actions that would be taken by the Diocese to deal with this problem and the allegations of sexual abuse against the priest. But as Father Lebrun said, clergy at that time did not question the authority of the Church; the structure of the Roman Catholic Church was strict obedience and matters of sexuality were not spoken about openly, particularly sexual misconduct by a priest.

There was no public announcement by the Diocese of the circumstances leading to the departure of Father Gilles Deslauriers in 1986. No explanation was given to the clergy or to parishioners. Father Lebrun and others thought that the matter was mishandled by the Diocese, with negative repercussions in the Cornwall community for many years.

Father Vaillancourt, another priest involved in the Deslauriers matter, thought that the lack of a policy or written guidelines on sexual abuse was a significant problem when the Diocese was confronted with this issue in the 1980s. And as several priests stressed, what exacerbated the problem was that they had no training in such matters. Father Vaillancourt said that to this day he has not received training on the appropriate response to complaints of sexual abuse. It is important to note that neither he nor, to his knowledge, other priests notified the school board responsible for La Citadelle, where Father Deslauriers had been a full-time chaplain. Father Vaillancourt replaced Father Deslauriers as the chaplain of La Citadelle High School in September 1985.

After Father Deslauriers' departure from the Diocese of Alexandria-Cornwall, members of the clergy wanted to know how they were to respond. At the March 4, 1986, meeting of the Council of Priests, Father Romeo Major asked how priests should respond to the Deslauriers issue. Bishop LaRocque's answer was that priests were to tell parishioners and members of the public that Father Deslauriers left for personal reasons.

Bishop LaRocque testified that he thinks he knew Father Deslauriers was in Hull under the guardianship of Bishop Proulx. By March 6, 1986, there were reports that "Father Gilles" was performing ministerial functions in that Diocese.

Father Deslauriers Celebrates Mass in Hull

After Father Deslauriers left the Diocese of Alexandria-Cornwall, Father Ménard learned from the Brisson family that the priest was celebrating mass in Hull. Another priest had fallen ill and Father Deslauriers was asked if he would perform ministerial functions in the parish.

Father Ménard told Bishop LaRocque that Father Deslauriers was performing ministerial functions in Hull. Father Ménard asked whether Bishop Proulx was aware of the sexual allegations made against Father Deslauriers. At the request of Bishop LaRocque, on about March 18, 1986, Father Ménard travelled to Hull to ensure that Bishop Proulx knew of the complaints of sexual abuse by parishioners in the Diocese of Alexandria-Cornwall. Father Ménard testified that his purpose in visiting Bishop Proulx was twofold: (1) to persuade the Bishop to remove Father Deslauriers from his clerical functions in the Diocese of Gatineau-Hull; and (2) to ensure that Father Deslauriers was receiving therapy, as Father

Ménard believed that consistent and good treatment could change the priest's sexual behaviour with children and young people.

When Father Ménard met with Bishop Proulx, it was apparent that the Bishop had some knowledge of Father Deslauriers' inappropriate conduct but was unaware of the magnitude. Bishop Proulx asked Father Ménard to meet with Father Deslauriers, who was at the parish of Notre-Dame de Lorette. Father Deslauriers was very surprised to see Father Ménard. Father Ménard was direct; he said there were several allegations of sexual misconduct against him and that it was inappropriate for Father Deslauriers to perform clerical functions and to have contact with young people. Father Ménard told the priest that he thought he should leave the area. Father Deslauriers assured Father Ménard that he was seeing a therapist weekly. But Father Ménard had no confidence that the therapist actually knew about the sexual abuse allegations. It was also Father Ménard's opinion that Father Deslauriers should be receiving more than weekly therapy. Father Ménard shared his concerns with Bishop LaRocque in correspondence.

Father Ménard met with a group of lay people around March 21 or 22—several families and three couples. They were impatient. They were upset at the slow pace at which the Church was responding to the sexual abuse allegations and greatly concerned that Father Deslauriers was performing clerical functions in Hull. Dr. Denis Deslauriers, Benoit Brisson's father-in-law, suggested that there might be a requirement for Father Deslauriers' abusive conduct to be reported to the civil authorities. However, some of the people at the meeting expressed the desire that this issue be addressed within the confines of the Church.

On March 22, 1986, Mr. and Ms Brisson sent a letter to Bishop LaRocque, Bishop Proulx, the Apostolic Nuncio, the Prefect of the Congregation for Bishops, and Archbishop Spence. They wrote that Father Deslauriers had been seen celebrating mass in Hull one week after he left Cornwall. They also stated that Father Deslauriers had travelled to the Cornwall area and had been seen on several occasions, at the hospital and at the Caisse Populaire. Hubert and Lise Brisson complained that the Church did not appear to have taken any measures either to assist the young victims or to treat Father Deslauriers.

It was clear to Bishop LaRocque that people outside the Diocese now had knowledge of the sexual abuse allegations against Father Deslauriers and that the situation was escalating. The Bishop was disappointed and upset with the Brissons for maintaining that he was not taking action to address the situation. In correspondence to Mr. and Ms Brisson on March 25, 1986, Bishop LaRocque expressed his disappointment in them:

Que vous vous êtes sentis obligés de faire appel à tous les niveaux de la responsabilité hiérarchique indique la profondeur de votre angoisse,

mais me déçoit beaucoup. Ce manque de confiance à mon endroit me blesse énormément.

The Bishop clearly did not offer support to Mr. and Ms Brisson, whose son, Benoit, was an alleged victim of childhood abuse by a priest.

Father Ménard Sends a Report on the Deslauriers Matter to the Bishop

After meeting with the aggrieved victims and distressed families, Father Ménard wrote a letter and submitted a report to Bishop LaRocque. Before sending it to the Bishop, he shared the contents of the report with Fathers Bisaillon and Vaillancourt.

In the March 25, 1986, correspondence to the Bishop, Father Ménard explained that he had prepared the report because the Gilles Deslauriers matter was escalating. More people in the Cornwall area had become aware of the priest's alleged sexual misconduct and dissatisfaction with the Church's failure to initiate measures to prevent further victimization was growing. Father Ménard stressed that it was important to listen to the victims and families to learn the truth, and to promote justice and healing. He maintained that the faith of these young people and their families was at stake. He informed Bishop LaRocque that dissatisfied people in the Diocese had sent letters regarding Father Deslauriers to Church superiors: to the Apostolic Nuncio, to the Archbishop for the region of Cornwall, and to Rome. Father Ménard had supported the initiative of the victims and their families.

In his report, Father Ménard described the details of abuse conveyed to him by the alleged victims of Father Deslauriers. He wanted the Bishop to fully understand the seriousness of the situation. Father Ménard also described the spiritual manipulation of consciences, which included the abuse of power by Father Deslauriers. He discussed Father Deslauriers' deception and dishonesty in telling these alleged victims that his "therapy" would help them. As Father Ménard commented in his evidence, the commission of the acts of abuse is serious, but when the perpetrator denies or does not regard the acts as improper or wrong, it is much graver:

C'est que quelqu'un fasse du tort, c'est grave. Mais quand quelqu'un en toute apparence n'arrive pas à voir qu'il fait du tort ou en tout cas le nie, c'est plus grave. C'est encore plus grave. Fait que là c'est une question de conscience faussée là. Alors, ça, ça m'inquiétait.

Father Ménard made several recommendations in the report he submitted to the Bishop. In his view, Father Deslauriers should be prohibited from engaging

in pastoral work; only after completing treatment and receiving a suitable evaluation from the therapist was Father Deslauriers to be allowed to return to clerical functions. It was Father Ménard's understanding that Father Deslauriers was undergoing therapy with Father Jacques Jobin. He asked the Bishop to ensure that the priest was attending appointments and following the prescribed treatment. Father Ménard also recommended that Father Deslauriers receive more intense treatment—group as well as individual therapy. He suggested Southdown and the rehabilitation centre operated by Jeannine Guindon in Montreal, but as mentioned, the latter did not have the expertise to treat individuals for sexual abuse. Father Ménard did not recommend the centre in Pierrefonds because it was not a treatment centre for psychological problems, but Bishop LaRocque suggested that Father Deslauriers attend there for three months.

Father Ménard also suggested to the Bishop that Father Deslauriers undergo a process of absolution and, if required by canon law, suspension. As Father Ménard explained in his evidence, if a priest abuses the sacred seal of confession by committing the crime of solicitation during confession, he must seek absolution from Rome.

Father Ménard recommended that Father Deslauriers leave the Diocese of Hull immediately. He also stressed that any diocese that received Father Deslauriers should be fully apprised of the priest's past conduct with young persons. Furthermore, he stated that the priest should be prevented from communicating with any of the victims whom he had allegedly abused.

Finally, Father Ménard proposed that the Church establish a committee, an ecclesiastical tribunal, to hear from the victims and their families as well as priests, and to make recommendations to the Bishop. The costs of therapy for victims of abuse should be defrayed by the Church, wrote Father Ménard in his report.

Bishop LaRocque travelled to Hull to meet with Bishop Proulx. Although he intended to meet alone with Bishop Proulx, to his consternation Father Deslauriers was present during the entire meeting. Bishop Proulx defended Father Deslauriers throughout the discussion.

Bishop LaRocque asked Bishop Proulx to remove Father Deslauriers from ministerial duties at the parish. Some of the young people who had been victimized by Father Deslauriers lived in Ottawa, which is near Hull. Bishop Proulx was not receptive to Bishop LaRocque's suggestion.

At this meeting, Bishop LaRocque discussed the seriousness of the sexual acts, but Gilles Deslauriers insisted that his conduct was "therapy." Bishop LaRocque was aware at this time that there were between eight and twelve alleged victims. He left the Diocese of Gatineau-Hull without any commitments by Bishop Proulx and considered his meeting unsuccessful. Bishop LaRocque still

did not consider contacting the police, despite the fact that Father Deslauriers was continuing to exercise his ministry in another diocese and had contact with young people—other possible victims of sexual abuse.

Father Ménard decided to bring a copy of his March 25, 1986, report to Bishop Proulx in Hull. He wanted to ensure that Bishop Proulx was aware of his recommendations.

The Establishment of the Ad Hoc Committee

After reading Father Ménard's report and conferring with Monsignor Bernard Guindon, who had a degree in Canon Law, Bishop LaRocque agreed in early April 1986 to establish an ad hoc committee. Father Ménard had recommended that the members of the committee not include the Bishop. Bishop LaRocque decided that the committee should consist of Jacques Leduc, the Diocese lawyer, who had a Bachelors degree in Canon Law from Saint Paul University, and Sister Claudette Pilon, whom the Bishop mistakenly thought was a psychologist but who in fact was in the process of pursuing a Masters degree in Pastoral Studies and Matrimonial Counselling at Saint Paul University at the University of Ottawa. In addition, the Bishop selected Monsignor Guindon to chair the Ad Hoc Committee on the Father Gilles Deslauriers Case. Members of the committee were asked to listen to the testimony of witnesses designated by the Bishop and to make recommendations. Bishop LaRocque testified that at the time he established the Ad Hoc Committee, he was morally certain that Father Deslauriers had engaged in sexual acts with young people, considered "one of the worst crimes" by the Church. By letter dated April 3, 1986, Bishop LaRocque informed Mr. and Ms Brisson that the Ad Hoc Committee under the direction of Monsignor Guindon had been established to address the Deslauriers matter. The Bishop requested that they appear before the committee.

Bishop LaRocque asked Father Gilles Deslauriers to testify before the Ad Hoc Committee. In a letter dated April 6, 1986, the Bishop also requested Father Deslauriers to continue his treatment in Pierrefonds with Father Jobin. However, Father Deslauriers refused to stay in Pierrefonds for the three months proposed by the Bishop, and left after a short time. Bishop LaRocque told the priest in the April letter that he had received correspondence from Rome that indicated Father Deslauriers should be prohibited from hearing confessions. Church officials in Rome had stated that although no crime in canon law had been committed, it was advisable to withdraw Father Deslauriers' faculties from hearing confessions. Bishop LaRocque asked Father Deslauriers to leave the region of Hull.

Father Jobin, Father Deslauriers' therapist, communicated with Bishop LaRocque on April 18, 1986. He told the Bishop that in his opinion, Father Deslauriers should continue to hear confessions as it was part of his rehabili-

tation. Father Jobin was a priest and a psychotherapist. Father Deslauriers had been referred to Father Jobin by Bishop Proulx. It was Bishop LaRocque's belief that Father Deslauriers had also manipulated his therapist.

Father Deslauriers responded to the Bishop's letter on April 16, 1986. He challenged the composition of the Ad Hoc Committee, and made it clear that he would not complete the three-month retreat in Pierrefonds.

Testimony Heard by the Ad Hoc Committee

The Ad Hoc Committee heard evidence from alleged victims of Father Deslauriers, members of their families, and priests.

Bishop LaRocque had made a list of witnesses whom he thought should give evidence at the Ad Hoc Committee. The list included alleged victims and their parents, such as Benoit Brisson and Mr. and Ms Brisson. It also included clergy, such as Father Ménard, Father Vaillancourt, Father Bisailon, and the alleged perpetrator, Father Gilles Deslauriers. It is noteworthy that Father Claude Thibault's name was crossed out. This priest, an alleged victim, was not requested by the Bishop to testify before the committee.

Monsignor Guindon, Chair of the Ad Hoc Committee, and Mr. Leduc, the Diocese lawyer, asked the witnesses questions to collect facts on the allegations against Father Deslauriers. Sister Pilon helped the victims and families to tell their stories and listened to the individuals who gave evidence at the committee.

Members of the Ad Hoc Committee were asked to take an oath of secrecy. Sister Pilon said that she was requested to take an oath of confidentiality on the Bible each day of her involvement in this committee. She swore that she would not disclose the contents of the meetings. Similarly, Monsignor Guindon told Cornwall police officers Herb and Ron Lefebvre, who later investigated the Deslauriers allegations, that he was sworn to secrecy and would not divulge any information heard at the Ad Hoc Committee. When Sister Pilon became involved in this Inquiry, it was the first time she had revealed information about the Ad Hoc Committee, of which she was a member twenty-three years earlier.

The Ad Hoc Committee members learned from the priests who appeared before them that some of Father Deslauriers' alleged victims were minors under the age of eighteen. Although Father Deslauriers told Father Ménard that he had had contact with about fourteen youths, it became clear from the alleged victims who testified at the diocesan committee that the number of people who had been sexually molested by the priest was much greater. It also became apparent to members of the ecclesiastical committee that Bishop Proulx, formerly the bishop of Cornwall, had a close relationship with Father Gilles Deslauriers.

Despite the fact that Father Deslauriers had been a chaplain at La Citadelle High School and had worked at other schools, Monsignor Guindon, Sister Pilon,

and Jacques Leduc did not discuss the importance of notifying the schools or school boards. Nor did they pursue whether they should report Father Deslauriers' inappropriate sexual behaviour to the Children's Aid Society or to the police, according to Sister Pilon. In fact, Dr. Denis Deslauriers, Benoit Brisson's father-in-law, had expressed concern at the Ad Hoc Committee that a crime had taken place that had not been reported to the civil authorities. Jacques Leduc, the Diocese lawyer, agreed that the evidence heard by the Ad Hoc Committee indicated there was a serious breach of trust between Father Deslauriers and his alleged victims. Father Bisailon suggested to the committee members that the Diocese pay for therapy for the victims allegedly abused by Father Deslauriers as well as for their family members. It was estimated that the number of victims who required such therapy could be as high as forty.

The Ad Hoc Committee heard evidence from alleged victims, their families, and their spouses. Most of the alleged victims were now young adults in their twenties.

Many of these witnesses were both shocked and outraged that Father Deslauriers was being permitted to exercise ministerial functions in another diocese. Some strongly argued that the priest should be prohibited from pastoral work and contact with children or young people.

A parishioner who testified before the Ad Hoc Committee proposed that a canonical inquest of the allegations against Father Deslauriers and Bishop LaRocque's handling of the matter be undertaken. It was clear to the committee that people in the Diocese were not only very disturbed by Father Deslauriers' behaviour but also deeply upset at the failure of Bishop LaRocque to address this serious situation. Bishop LaRocque considered this parishioner's accusations very insulting and did not give any consideration to a canonical inquest. An inquest did not take place.

Recommendations of the Ad Hoc Committee to Bishop LaRocque

The Ad Hoc Committee completed its report to Bishop LaRocque on May 23, 1986. It was signed by the Chair, Monsignor Guindon, Jacques Leduc, and Sister Pilon. The report contained six recommendations.

The first recommendation was that Father Deslauriers be suspended "a divinis" and that a competent authority (*l'autorité compétente*) uphold his exclusion from the Diocese. A suspension "a divinis" was a decision that Church authorities in Rome had to make. This meant that the priest would not be permitted to exercise any public ministry.

The second recommendation was excommunication, followed by incardination into another diocese with conditions. It was proposed that Father Deslauriers

undergo therapy by a qualified psychologist who was fully cognizant of the behaviour engaged in by the priest, with the proviso that Father Deslauriers be prohibited from any pastoral functions until the competent authority was convinced that he was fully rehabilitated. A copy of the Ad Hoc Committee report was to be sent to the therapist.

The third recommendation of the Ad Hoc Committee was addressed to the people who wished to undergo counselling and treatment as a result of the acts of Father Deslauriers. It proposed that the Diocese assume the cost of such therapy and that Father Deslauriers be responsible for these costs.

A further recommendation was that serious consideration be given to Father Ménard's report.

Nowhere in the recommendations did the Ad Hoc Committee propose that the Diocese try to seek out other possible victims to ensure that they, too, received therapy for the sexual abuse committed by the priest. The Ad Hoc Committee also did not make recommendations to the Bishop on the importance of contacting outside agencies such as the Children's Aid Society, the school boards, or the police to alert these institutions to the sexual conduct of Father Deslauriers with boys and young people. Mr. Leduc, the Diocese lawyer, explained that because the victims were now in their early twenties and were young adults, and because the sexual assaults were historical, the Ad Hoc Committee did not recommend that the Diocese contact outside agencies. Clearly, thought was not given to other victims or to the risk of abuse of other children or other young people with whom Father Deslauriers came into contact after he left the Diocese of Alexandria-Cornwall.

After the Ad Hoc Committee submitted its report to the Bishop on May 23, 1986, the Bishop did not meet with the committee members to discuss the information gathered from the priests, victims, and victims' families. Nor did the Bishop discuss the recommendations put forth by Monsignor Guindon, Sister Pilon, and Mr. Leduc.

No investigation was undertaken by the Diocese of Alexandria-Cornwall to determine whether other children were abused at the schools or at other locations or with other groups at which Father Deslauriers had been involved. Nor did the Bishop himself consider contacting agencies outside the Church to alert these institutions to the sexual misconduct by Father Deslauriers.

Although one of the recommendations of the Ad Hoc Committee was payment for counselling for the alleged victims of Father Deslauriers, Bishop LaRocque did not send any written material to the alleged victims to alert them to the availability of counselling. Nor did the Diocese make any efforts to find other victims to let them know that the Church would absorb the cost of their counselling, such as former students at La Citadelle High School.

The Brisson Family Contacts the Media

It was in May 1986 that the Brisson family decided to contact the media to publicize the abuse allegedly committed by Father Gilles Deslauriers on young persons in the Cornwall community. Ms Brisson testified that they did not think that the matter was adequately progressing and that Benoit was not satisfied with the response of the Diocese. She contacted Charlie Greenwell, who agreed to come to the Brisson home. Mr. Greenwell arrived with a camera operator and interviewed Benoit Brisson and his parents. The following day, May 19, 1986, the story was broadcast on television as well as on the radio: CJOH and Radio-Canada.

Bishop LaRocque agreed that when the Brisson family went public with their story, the Deslauriers matter became scandalous for the Diocese of Alexandria-Cornwall.

Cornwall Police Interview Bishop LaRocque, Father Thibault, and Other Members of the Clergy

In May 1986, Sergeant Ron Lefebvre and Constable Herb Lefebvre of the Cornwall Police Service (CPS) were assigned the investigation of the allegations of abuse against Father Deslauriers. Sergeant Ron Lefebvre was the lead investigator. On May 27, 1986, they met with Monsignor Guindon. He informed the CPS officers that he had been on the committee set up by the Bishop to inquire into the allegations against Father Deslauriers. Monsignor Guindon told the officers that he had taken an oath of secrecy and could not reveal any information on the committee's findings to the CPS.

Later that day, the CPS officers met with Bishop LaRocque. The Bishop acknowledged that Father Deslauriers had a forceful character and that he could be manipulative. The Bishop told the officers that Father Deslauriers had explained to him that what he had done was therapy, "although not the type taught at the seminary." The Bishop also stated that he had transferred the priest. In the Bishop's opinion, Father Deslauriers did not recognize that he had a problem. Bishop LaRocque refused to provide information regarding the Ad Hoc Committee's findings, as he claimed they were confidential. He indicated that there was a 180-page transcript at his residence of the committee's findings.

Sergeant Ron Lefebvre and Constable Herb Lefebvre continued to conduct interviews and take statements throughout May and June in relation to the Deslauriers investigation.

On June 3, 1986, Sergeant Ron Lefebvre and Constable Herb Lefebvre arrived at a rectory in Alexandria, where the Bishop and priests from the Diocese were meeting at that time. The police officers asked to speak to Father Claude Thibault.

Father Claude Thibault had learned from Lise Brisson that the police were investigating allegations of sexual abuse by Father Gilles Deslauriers. But the young priest did not become involved, and was somewhat taken aback and “self-conscious” when the CPS officers arrived at the church on that day to interview him. He was not prepared to disclose the sexual abuse.

CPS officers Ron and Herb Lefebvre told Father Thibault that they either suspected or had reason to believe that he had been sexually abused by Father Deslauriers. Father Thibault immediately “panicked,” “felt torn inside,” and denied the abuse. One of the officers became irritated and said to the young priest, “What angers me most is the apparent attempt of the Church to cover up.” Father Thibault assured the Cornwall police officers that they were on the “right track” and that they needed to continue their work.

Father Thibault contacted Jacques Leduc. He knew that Mr. Leduc had a canon law degree and had studied at Saint Paul University. Mr. Leduc advised Father Thibault not to lie and explained that the priest could be held in contempt of court if he was not truthful with members of the judicial system. At Father Thibault’s request, Mr. Leduc contacted the CPS and told the police that the priest wished to withdraw his statement that he had not been abused by Father Gilles Deslauriers.

Father Thibault was prepared to participate in the police investigation. In Mr. Leduc’s presence, he gave a statement to Sergeant Ron Lefebvre and Constable Herb Lefebvre at the Cornwall police station. As I discuss later in this section, Father Thibault gave evidence at the preliminary inquiry of Father Deslauriers on September 15, 1986.

The Cornwall police officers also took statements from other priests in the Diocese of Alexandria-Cornwall. Jacques Leduc was present for the June 1986 police interviews of Father Ménard and Father Vaillancourt. His role was to provide these clergy with legal advice, should it be required.

The Cornwall police officers contacted Mr. Leduc to arrange a meeting with Bishop LaRocque, as they wished to take a statement. When Constable Herb Lefebvre and Sergeant Ron Lefebvre arrived at Bishop LaRocque’s residence on June 16, 1986, the Bishop refused to give a written statement to the police. The Bishop told the officers that he did not want to lose the trust of the priests in his Diocese, and he refused to answer any police questions or divulge any information that was not already public. The Bishop made it clear to Sergeant Ron Lefebvre that “should he be called to court, he would not answer questions, he would go to jail first. With that said, the interview was completed.” Jacques Leduc was present at this meeting between the Bishop and the CPS officers.

As mentioned, the CPS officers had previously met with the Bishop on May 27, 1986, and had asked for the report of the Ad Hoc Committee. Bishop

LaRocque had refused. He has stated that the report was confidential and could not be released by the Diocese.

Chief Claude Shaver testified that the two officers approached him near the end of their investigation and asked if he, as the Chief of Police, could do anything to help. The officers had relayed to him the Bishop's unwillingness to co-operate. The Chief recalled that there were issues surrounding Father Deslauriers' whereabouts and the Bishop's refusal to provide a document from the meeting of the Ad Hoc Committee. Chief Shaver described the officers as emotional and distraught. They told him that they were Catholics and this might affect their faith. Chief Shaver testified that the information relayed to him by the officers concerned him and that he decided to call the Bishop. Chief Shaver testified that the CPS officers could have obtained a warrant in relation to the document but that they did not believe they needed one as they were obtaining the information for their investigation through other means, witnesses.

Staff Sergeant Luc Brunet also testified that he had been made aware of the difficulties the officers had with the Bishop. During the Silmsier investigation, Staff Sergeant Brunet recalled Sergeant Ron Lefebvre telling him that there was little point in dealing with the Diocese. Based on his experience in the Deslauriers investigation, Sergeant Lefebvre advised Staff Sergeant Brunet not to expect co-operation from the Diocese.

Mr. Leduc had advised the Bishop that he was not required to give a statement to the police. However, Mr. Leduc explained that if subpoenaed to court, there was no privilege that would protect the Bishop from having to divulge information disclosed to him by priests in the Diocese. When he gave his evidence at the Inquiry, Bishop LaRocque said that he no longer agrees with the position he took in 1986. He now believes that a Bishop must take the risk of losing the trust of priests in his Diocese in cases such as that of Gilles Deslauriers. The former bishop of Alexandria-Cornwall said that if such a situation arose today, he would be prepared to cooperate with the civil authorities.

It is noteworthy that Mr. Leduc did not discuss with the Bishop that his refusal to speak to the CPS might hinder the criminal investigation. Nor did he have any recollection of suggesting to the Bishop that La Citadelle High School or the school board should be contacted regarding the sexual abuse allegations and criminal investigation of Father Deslauriers. This was despite the fact that Jacques Leduc was a trustee on the Catholic school board for about six or seven years and held other positions on the board. Jacques Leduc testified that he never discussed the duty to report with the Bishop.

It is also noteworthy that at a meeting requested by the Bishop, Ms Brisson had a recording device that had been requested by the CPS. According to the evidence of Inspector Richard Trew, Sergeant Ron Lefebvre had obtained a warrant to

allow Lise Brisson to carry a recording device in her meeting with the Bishop. Sergeant Ron Lefebvre was the lead investigator on the Father Deslauriers case. Inspector Trew was the Officer in Charge of the CIB at the time. The CPS officers involved in the Father Deslauriers investigation were concerned that the Bishop was not being cooperative regarding this case. The listening device carried by Ms Brisson did not yield information of concern to the Cornwall police.

Incardination Into Another Diocese

On June 3, 1986, Father Deslauriers sent Bishop LaRocque a letter requesting his excardination from the Diocese of Alexandria-Cornwall. Bishop LaRocque contacted Bishop Proulx to ask him if he was prepared to incardinate Father Deslauriers into his diocese with certain conditions. Bishop LaRocque explained that, according to canon law, excardination and incardination must be done simultaneously.

In a letter to Bishop LaRocque on June 20, 1986, Bishop Proulx wrote that he wanted to wait until the criminal matter was resolved before he considered the incardination of Father Deslauriers into the Diocese of Gatineau-Hull. Bishop Proulx was well aware of the CPS criminal investigation and did not want to make a decision on the incardination of Father Deslauriers at this time. Bishop Proulx asked Bishop LaRocque to pay Father Deslauriers' salary for June, July, and August 1986.

Bishop LaRocque instructed the Reverend Gordon Bryan to make arrangements to pay Father Deslauriers' salary. The Reverend replied in a memo to the Bishop that he could not justify writing a cheque to "Gilles." In a routine audit, he had discovered a bank account of over \$150,000 in Father Deslauriers' name, which the bursar referred to as a "nest egg." This was a great concern to the bursar of the Diocese. Neither the Bishop nor Reverend Bryan had been aware of this fund. The memo to the Bishop stated:

After a great deal of thought and prayer I feel in conscience I cannot justify making up a cheque for Gilles. The reason originally for continuing Gilles' salary was because he needed money to live. After "discovering" his nest egg of over one hundred and fifty thousand I am sure you agree his survival is assured.

Although I cannot prove it, I am morally certain that these funds were solicited and collected to assist diocesan vocations.

Bishop LaRocque was surprised to learn about the existence of this fund. Father Deslauriers had never apprised the Bishop of this money and the funds and account had not been recorded in the Diocese's financial books.

As I discuss, several months later, on November 10, 1986, the date of Father Gilles Deslauriers' sentence in criminal court, Bishop LaRocque wrote and asked him to return the money that belonged to the Diocese in the fund discovered by Reverend Bryan. Father Deslauriers was not yet excardinated from the Diocese of Alexandria-Cornwall. Bishop LaRocque wrote to Bishop Proulx on December 9, 1986, to advise him that the criminal matter was now resolved and that he wished to proceed with the excardination and incardination of Father Deslauriers. He listed some of the conditions of Father Deslauriers' probation order.

In his December 1986 correspondence to the Bishop of Gatineau-Hull, Bishop LaRocque wrote that Father Deslauriers' manipulation was more serious than his behaviour in the past with young people—in other words, the sexual abuse by Father Deslauriers:

[L]'abbé Gilles m'a menti et manipulé; cette manipulation des personnes est sans doute bien plus sérieuse que les gestes qu'il aurait posés avec certains jeunes et pourrait se manifester d'autres façons à l'avenir ...

Bishop LaRocque acknowledged at the Inquiry that although he may have thought at the time that Father Deslauriers' manipulation was more serious than the sexual abuse of youths and other people in the Diocese, he no longer held this view: "[C]'est peut-être ma pensée à ce moment-là, mais ce n'est plus ma pensée maintenant."

In this letter to Bishop Proulx, Bishop LaRocque stated that Father Deslauriers should not be permitted to exercise ministry in the Diocese of Alexandria-Cornwall or in parishes bordering on or in close proximity to it. Bishop LaRocque enclosed a copy of the December 9, 1986, excardination with conditions signed by him and Chancellor Denis Vaillancourt. This had also been sent to Father Deslauriers.

Bishop LaRocque had previously consulted Monsignor Guindon and Chancellor Vaillancourt, who were well versed in canon law; they were of the view that the excardination with conditions for Father Deslauriers conformed with canon law. As discussed, the Ad Hoc Committee had asked Bishop LaRocque to include conditions in the excardination of Father Deslauriers.

Bishop Proulx was resistant to excardination with conditions for Father Deslauriers. In a letter dated December 16, 1986, he indicated that he had consulted Father Frank Morrissey, a Professor of Canon Law at Saint Paul University, who said that no conditions could be attached to an act of excardination. But this was contrary to the advice received by Bishop LaRocque from the experts in canon law in his Diocese. Bishop LaRocque was insistent. But

again in correspondence the following month, on January 15, 1987, Bishop Proulx argued that excardination must be without conditions. Bishop Proulx also wanted information on the criminal charges against Father Deslauriers removed from the act of excardination.

Bishop LaRocque relented and agreed to sign an act of excardination without conditions. This was accepted by Bishop Proulx. As mentioned, the Ad Hoc Committee had recommended that conditions be attached to Father Deslauriers' incardination into another diocese. Bishop LaRocque was unsuccessful. In February 1987, Father Deslauriers was incardinated into the Diocese of Gatineau-Hull without conditions.

As I discuss, Father Deslauriers did not remain in the Diocese of Gatineau-Hull for very long. After Bishop Proulx died in July 1987, Father Deslauriers went to the Diocese of Saint-Jérôme. Bishop LaRocque wrote to Monsignor François Valois of the Diocese of Saint-Jérôme and advised him that Father Deslauriers was manipulative.

Father Deslauriers Is Criminally Charged

The Preliminary Inquiry

Bishop LaRocque made it clear that he did not want to be involved in the criminal process. On September 3, 1986, the Bishop was served with a subpoena to testify on behalf of the Crown at the preliminary inquiry. He wrote a letter to Father Deslauriers on the same day. The Bishop was upset about the subpoena and critical of a process that had the effect of breaching confidentiality between a Bishop and his priests. The Bishop told Father Deslauriers that he had no intention of testifying either for or against Father Deslauriers or the victims:

Ce matin deux officiers m'ont servi une assignation pour témoigner à la demande de la couronne. Je dois te dire qu'une telle procédure va contre toute confidentialité qui doit exister entre l'évêque et ses prêtres; je n'ai nullement l'intention de témoigner ni pour ni contre toi ou les jeunes.

At the Inquiry, Bishop LaRocque claimed that he would not take this position today. The former bishop of Alexandria-Cornwall stated that he now would be willing to cooperate with authorities in a situation similar to that of Father Deslauriers. As he explained at the hearings, "I would not do so now because I have learned differently, but this is where I was at the moment."

As I discuss in Chapter 11, the preliminary hearing took place from September 15 to September 18, 1986. Alleged victims, such as Claude Thibault, received subpoenas to give evidence. When Father Thibault met with Crown Attorney

Rommel Masse, to his surprise and embarrassment he saw other alleged victims who had been his classmates or who had been involved in the R3 movement. Father Thibault did not feel adequately prepared for the preliminary inquiry. He said that the Crown did not discuss with him the availability of a publication ban or victim assistance. Other alleged victims of Father Deslauriers also testified. Bishop LaRocque attended the preliminary inquiry but was not required to give testimony.

Jacques Leduc was retained by the Diocese to follow the preliminary inquiry, what the lawyer described as a “watching brief.” During the course of Benoit Brisson’s cross-examination, Mr. Leduc spoke to this witness. He approached Mr. Brisson because he thought some of the information he was being asked to divulge in questioning by the defence lawyer was in the context of a confession. After speaking to the Crown, Mr. Leduc told Benoit Brisson that if the statements were made in a confession, he could advise the court of this. The preliminary inquiry and Mr. Leduc’s interaction with Benoit Brisson are further discussed in the chapter on the institutional response of the Ministry of the Attorney General.

Father Deslauriers Pleads Guilty—No Incarceration

On September 18, 1986, Father Gilles Deslauriers was committed to stand trial on seven counts of indecent assault and four counts of gross indecency. He had initially been charged with eight counts of indecent assault and eight counts of gross indecency. A few days prior to his scheduled trial, Father Deslauriers pleaded guilty to some of the criminal charges. He was convicted on November 10, 1986, of four counts of gross indecency contrary to section 157 of the *Criminal Code*.

Victims abused by the priest were upset at Father Deslauriers’ sentence. He was given a suspended sentence and two years probation. He was not ordered to serve a term of imprisonment. The convicted priest was simply placed under the supervision of Bishop Proulx for two years and required to undergo therapy. Father Deslauriers was ordered by the court to continue treatment with a therapist, Father Jobin, on a schedule to be determined by the priest’s probation officer.

Bishop LaRocque, to his recollection, was not informed or consulted about the supervision of Father Deslauriers by either the Crown or Bishop Proulx.

Father Thibault testified that he would have liked to have been involved in the sentencing process. He was both disappointed and dissatisfied with the terms in the probation order and in particular, the treatment ordered for Father Deslauriers:

I was very disappointed. I knew that there was a risk that our prosecution of him would lead him to go to jail. That was not my intent at all. I basically had two motives, to make sure that nobody else would go through what I went through and also I was aware that he

needed help big time. What I had done previously in confronting him in all of this I felt didn't lead to anywhere, so collaborating with the investigation and the prosecution I was hoping that he'd be forced to get that help, which was not the case. I was disappointed. I felt that he didn't get the help that he wanted and he was still dangerous ...

...

... [P]ersonally I believe that the therapy he was asked to do once a week or something like that was not what he needed. I felt he needed something intense, full time, for a while.

Benoit Brisson's mother, Lise Brisson, and his former wife, Denyse Deslauriers, testified that they were frustrated by the inadequacy of the sentence. Chief Shaver stated that he contacted Crown Attorney Don Johnson because he, too, was upset about Father Deslauriers' sentence; he thought it was "way too lenient."

Father Deslauriers' guilty plea and sentence are further discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

The Diocese of Alexandria-Cornwall Offers to Pay the Costs of Therapy for Victims of Father Deslauriers

After Father Deslauriers pleaded guilty to the criminal sexual offences, Bishop LaRocque asked Father Thibault to act as his representative in notifying victims of Father Deslauriers that the Church would provide financial assistance for the cost of therapy or counselling. Because Father Thibault himself was a victim of Father Deslauriers, Bishop LaRocque thought that the priest could better communicate and discuss these issues with people in the Diocese who needed such therapy. The Reverend Gordon Bryan was instructed by the Bishop to reimburse individuals for these costs.

Father Thibault himself sought professional help for a few years from a therapist in Ottawa and these costs were paid by the Diocese. As mentioned, the Diocese did not send out any written notification to victims of the priest that counselling was available, nor did the Diocese make efforts to find other victims who had been abused by Father Deslauriers.

Father Deslauriers Moves to a Different Diocese

In Father Thibault's opinion, Father Deslauriers was a "manipulator," a "liar," and a danger to youths. Prior to Bishop Proulx's death, Father Thibault met with the Bishop in Hull. Father Thibault felt that Bishop Proulx was protecting the priest, "taking on Gilles under his wings." He wanted the Bishop of Gatineau-Hull to listen to an abused victim, an ordained priest who "loves the Church":

I had felt that his taking on Gilles under his wings was like saying, oh, don't—"faitez-lui pas mal"—don't hurt him, and so I wanted him to hear our side of the story. I knew he had heard Gilles' side and I had a pretty good idea what kind of stories Gilles could have told him based on the lies that I had heard him tell me, so I made an appointment with him and I told him basically: I want you to hear the side of one of the victims and not somebody who's angry at the church, who wants to destroy the church; I come here as a priest who loves the church and I want to tell you my side of the story ...

After sharing his perspective of Father Deslauriers with Bishop Proulx, it became clear to Father Thibault that he and the Bishop "weren't really on the same wavelength."

Knowing that "Gilles was on the loose," Father Thibault met with Bishop LaRocque. He asked the Bishop to remove Father Deslauriers' faculties, to prevent the priest from celebrating the sacraments. He told Bishop LaRocque that Father Deslauriers was "dangerous" and should not be involved in ministry. Bishop LaRocque's response was that he could not take these measures, as it would "destroy" Gilles Deslauriers. Father Thibault said at the hearings:

I did not express to him my real feeling, but when I heard that I was not impressed and I felt how many lives has he destroyed.

Father Thibault learned that Father Deslauriers was in the Diocese of Saint-Jérôme. People on holiday in Quebec saw Father Deslauriers in this diocese and relayed this information to Father Thibault.

Father Thibault then made arrangements to meet with Bishop Valois of the Diocese of Saint-Jérôme. They met at the office of the Canadian Bishops, as Bishop Valois had travelled to Ottawa for a meeting. But Bishop Valois was also not receptive and assured Claude Thibault that Father Deslauriers was being watched in his diocese. Father Thibault was not satisfied with this response:

I did not feel comfortable at all at that meeting. He told me: don't worry, we're watching him. I said: you cannot watch that man; I know, I've been through it. But we parted and he stayed there.

Father Deslauriers continued to wear a collar, celebrate mass, and have contact with young people. As Claude Thibault testified, "I was told he was watched, but I know that he can't be watched."

Chief Shaver received information that after Father Deslauriers had been sentenced, he was seen serving mass in Quebec. The Chief did not recall if he

asked Sergeant Ron Lefebvre or Constable Herb Lefebvre to look into this. Chief Shaver stated that he called Bishop LaRocque because he thought this might have been a breach of Gilles Deslauriers' probation. The Chief testified that he was unable to reach the Bishop. Chief Shaver did not ask anybody to contact individuals in Quebec to deal with the matter.

Gilles Deslauriers, in my view, should have been removed from ministry and not be permitted to move to different dioceses. He was a risk to parishioners in the Gatineau-Hull area and to those in the Diocese of Saint-Jérôme. As Father Thibault testified:

... [H]e was a repeat offender. He's a man that I still believe is dangerous and my recommendation was definitely that in that type of case he be totally removed from ministry, any kind of ministry interaction with people, not only with adolescents but with adults because he caused problems for a number of adults, also abused their trust, manipulated them and—but that he not be left on his own.

Conclusion

In Father Lebrun's view, the Father Deslauriers matter was mishandled by the Diocese and resulted in bad feelings among parishioners and members of the community in Cornwall for a long period. Father Thibault similarly thought that Father Deslauriers should have been removed from ministry and not permitted to work in another diocese.

The old philosophy remained entrenched at the time of the Deslauriers matter. The Diocese did not take active measures to report a priest's behaviour to civil authorities and was focused on avoiding scandal in the Diocese. Bishop LaRocque acknowledged that Catholic bishops would transfer priests "in difficulty" to other dioceses to avoid scandal and embarrassment to the Roman Catholic Church. As mentioned, there was also a belief by Roman Catholic bishops that if a priest confessed and was sent on a retreat, there would be a moral transformation after the retreat, at which time the priest would be reassigned to another diocese.

It is clear from the evidence of witnesses regarding the Father Gilles Deslauriers matter that the Diocese of Alexandria-Cornwall and Bishop Eugène LaRocque failed to provide training on sexual abuse of young persons by the clergy to individuals in the Diocese assigned to deal with such allegations: clergy, diocesan personnel, and volunteers. It is also evident that the Diocese and Bishop LaRocque at that time had not developed or adopted policies, guidelines, or protocols to respond to allegations of sexual misconduct of young persons by members of the clergy. Furthermore, the Diocese and Bishop LaRocque failed to take appropriate action to ensure that young people in the community would not be at

risk of inappropriate contact by Father Gilles Deslauriers. The Diocese and Bishop LaRocque failed to advise the police and Children's Aid Society in relation to the allegations of sexual abuse by Father Deslauriers of young persons. And significantly, they did not adequately cooperate with the Cornwall Police Service with respect to the investigation of the allegations of sexual misconduct by Father Deslauriers. It is also my finding that the Diocese and Bishop LaRocque did not take appropriate action to identify other potential victims of Father Deslauriers. Moreover, the Diocese and Bishop LaRocque failed to monitor the treatment of Father Gilles Deslauriers. It is also evident that the Diocese and Bishop LaRocque failed to ensure that sufficient conditions were applied in the incardinating dioceses with regard to Father Gilles Deslauriers, and by allowing Father Deslauriers to leave the Diocese and excardinating him they failed to maintain supervision of this priest.

Father Carl Stone

Father Carl Stone was in Cornwall in the Diocese of Alexandria between 1957 and 1963. He was a priest at St. John Bosco Parish on Ninth Street. The Bishop at that time was Rosario Brodeur. Prior to joining the St. John Bosco Parish, Father Stone was a priest in the Diocese of Ogdensburg in New York. As I discuss in this section, Father Stone was asked to leave several dioceses, including Cornwall, because of sexual and other inappropriate conduct.

Father Stone served as a priest in different dioceses in Canada and the United States. He returned to Cornwall in 1981. Eugène LaRocque was the Bishop of the Diocese of Alexandria-Cornwall at that time.

History of Sexual Relations With Boys and Young Men

According to correspondence between Church officials in the 1950s and 1960s, Father Carl Stone had sexual relationships with children and young adults. When Father Stone was instructed by Church officials to leave a diocese for his inappropriate conduct, he simply moved to another diocese, where he continued to engage in sexual behaviour with boys and young adults.

Father Stone joined St. John Bosco Parish in Cornwall in June 1957. The Bishop of the Diocese, Rosario Brodeur, received a letter in August from Monsignor William Argy, the Chancellor of the Diocese of Ogdensburg in New York. In the August 3, 1957, correspondence, Bishop Brodeur learned that Father Stone had a history of sexual misconduct. He became aware that Father Stone had engaged in inappropriate behaviour with children and young adults, referred to as *cum pueris*,

both before and during his years in the Diocese of Ogdensburg. Father Stone had been asked to leave the New York diocese and was designated a “refugee religious.” In the letter, the Chancellor of the Diocese of Ogdensburg wrote that “all faculties withdrawn for all time.” The Chancellor knew that Father Stone was in Cornwall and had not been reporting to his superior as required. Father Stone was considered by the Church to be *vagus*, that is, in a location without the permission of his superior. The 1957 letter from the diocese in New York states:

It has been brought to our attention that the Reverend Carl V. Stone, formerly in the Diocese of Ogdensburg Ad Experimentum, is residing at St. John Bosco’s Rectory in Cornwall. Considering all the circumstances, His Excellency, Bishop Navagh, felt you should be advised of the following:

1. Father Stone was asked to leave because of certain evidence of trouble “cum pueris.” This actually took place in Malone and *he has been returning to Malone from Cornwall. He was told to leave the Diocese and all faculties withdrawn for all time. There is a past history to this trouble before he came to this Diocese.*
2. Ordered by his Superior to return to the Provincial House at Ozone Park he advised that his services were being expected at Cornwall for a couple of week-ends. Consent was given to him to go on condition that he reported to his Superior as soon as he reached his destination. As of July 23 he had not yet reported to his Superior. It was about June 16 that he was ordered to leave the Diocese. He is therefore in a sense a refugee religious.

It is regrettable to have to advise you of the above facts concerning a priest but Bishop Navagh felt you should know. (Emphasis added)

Bishop LaRocque agreed in his testimony at the Inquiry that the comments about Father Stone were very serious, that it was clear the priest had engaged repeatedly in sexual misconduct with children, and that the New York diocese was warning Bishop Brodeur of the problems with this priest.

Bishop Brodeur confirmed in a letter in December 1957 to the Reverend Frank Setzer of the Montfort Fathers in New York that Father Stone had been at St. John Bosco Parish in Cornwall for the past six months. He wrote that Father Poirier of St. John Bosco believed that Father Stone had been a “victim of rash and unfair judgment,” and had invited him to his rectory with the permission

of Bishop Brodeur. Father Stone was accepted to this parish for one year *ad experimentum*, that is on a temporary basis.

The December 20, 1957, letter from the Bishop of Alexandria states:

Yes Reverend Carl Stone has been in our midst for the last six months. A Pastor of the diocese, Reverend H.A. Poirier of St. John Bosco Parish in Cornwall, Ontario, who knew him and beleived [sic] him to be a victim of rash and unfair judgement, invited him to his rectory. He asked me to give him the necessary jurisdiction to act as his assistant, which I did.

Recently I was asked by Father Poirier to sign a letter by which I would accept Father Stone for one year "ad experimentum." I had no objection, as Father Stone, since his coming here, gave no cause of anxiety; on the contrary his conduct was that of a good priest and his ministry most serious, zealous and efficient; but I made it clear that I would not incardinate him. The main reasons are that this diocese is small, that three of my seminarians are to be ordained this year and three more next year.

If you agree, Father Stone may stay here for the year, during which he may look about for a bishop.

With the hope of being some help to you and to Father Stone, I am

Yours devotedly in O.I.,
Bishop of Alexandria

This one-year stay was extended further by Bishop Brodeur at the request of Father Poirier. Father Stone remained a priest in Cornwall from 1957 until August 1963.

A second letter of concern was sent by the Diocese of Ogdensburg in April 1958. Father Stone had been seen in Malone, New York, wearing his collar. Church officials from the Diocese of Ogdensburg asked the Diocese of Alexandria to take measures to ensure that Father Carl Stone did not come to the New York diocese. Church officials were worried that the priest could be arrested by police for having relations with young men in the community. As Bishop LaRocque said in his testimony, this request from the Diocese of Ogdensburg was highly unusual. The letter from the Vice Chancellor of the Diocese of Ogdensburg reads:

Bishop Navagh has asked me to inform you that the Reverend Carl V. Stone, formerly in the Diocese of Ogdensburg ad experimentum and reportedly residing at a Catholic Rectory in Cornwall, has recently been seen in Malone, New York, wearing a collar and tie.

The Bishop of Ogdensburg is greatly concerned, as there is danger that the civil authorities would apprehend Father Stone if they thought he were trying to contact certain young men of that community. I believe the situation was explained somewhat in a letter of Monsignor Argy, Chancellor of Ogdensburg, to Bishop Brodeur under the date of August 3, 1957.

If Father Stone is at present in any way under the jurisdiction of the Diocese of Alexandria, any measures taken to keep him from returning to the Diocese of Ogdensburg would be most sincerely appreciated.

Regretting the necessity of seeking your assistance in a matter of this kind, but with every good wish, I am

Sincerely yours in Christ,

Very Rev. Msgr. John M. Waterhouse
Vice Chancellor
(Emphasis added)

The Diocese of Ogdensburg was concerned about a scandal in its community.

In correspondence in May 1958, Bishop Brodeur explained to the Bishop of Ogdensburg that he had been “tolerat[ing] the presence of Father Stone in the Diocese” of Alexandria for the following reasons. First, there was a “very pressing need for priests” in the Cornwall area. Second, Bishop Brodeur stated that he had been “instrumental in saving 18 out of 20 unfortunate priests from despair and enabling them to resume their ministry.” The Bishop thought he might be able to change Father Stone’s improper behaviour. Third, Father Carl Stone was being supervised by a pastor.

In this letter, Bishop Brodeur said that Father Stone had been cautioned that he would be expelled from the Diocese of Alexandria if he visited the Diocese of Ogdensburg and in particular, Malone. An exception was made for contact with his mother, an elderly and ill woman, who lived in Malone. In such circumstances, Father Stone was obliged to obtain permission to visit his mother and was required to be accompanied by a priest from the Diocese of Alexandria for the trip to the

New York diocese. Bishop Brodeur ended the letter with optimism that Father Stone would adhere to these conditions, and that his inappropriate behaviour would cease:

So, Your Excellency, with those conditions clearly understood and willingly accepted by Father Stone, I feel confident that you will have no more cause to worry about him, that I'll not be forced to throw him out on the street, that he will profit by this chance, either to return to his Community or go and do good work in some distant diocese. I might be all wrong, but I pray your Excellency to bear with me in this attempt to help an unhappy priest.

Unfortunately, however, Father Stone did not comply with the conditions imposed by Bishop Brodeur. The priest was found in New York in the Diocese of Ogdensburg with boys at night. These encounters had occurred several times. The police were "checking" the situation. Monsignor Argy again wrote to Bishop Brodeur on October 31, 1958:

I have the unfortunate duty of advising you that the Reverend Carl V. Stone was in the Diocese of Ogdensburg and brought boys to his camp. They have been there at nighttime. This took place on at least two occasions during the summer and again recently. We have also been advised that the police are checking on the situation. (Emphasis added)

Although Bishop Brodeur had assured Church officials at the Diocese of Ogdensburg that he would take immediate action and expel Father Stone if he travelled without permission to the New York diocese, the Bishop of Alexandria failed to carry through with these measures. Instead, Father Stone remained a priest in Cornwall for almost another five years. It was not until 1963 that Father Stone was required to leave the Diocese of Alexandria as a result of a "misdemeanor" for which the Cornwall police had "threatened to intervene." In October 1963 correspondence, Bishop Brodeur wrote:

To my regret, I must inform you that Father Carl Stone has left Alexandria Diocese sometime in August when the Cornwall Police threatened to intervene after his misdemeanor.

The Bishop further stated that he was "very sorry" and that he "highly appreciated" Father Stone for his good work.

Father Stone Returns to Cornwall in 1981

At the request of Father Gary Ostler, a priest at St. John Bosco Parish, Bishop Eugène LaRocque interviewed Father Carl Stone in October 1981. He had become the Bishop in 1974. Father Ostler asked the Bishop to permit Father Stone to work in the Diocese of Alexandria-Cornwall.

It is important to understand features of the relationship between Father Ostler and Father Carl Stone. There was a significant age difference between the two priests. Gary Ostler had been an altar boy in Father Stone's parish. Bishop LaRocque was aware of this. When Father Stone arrived in Cornwall in 1957, Gary Ostler was eleven years old, and when the priest left the Diocese in 1963, he was seventeen.

Bishop LaRocque read the Church files on Father Stone and spoke to Father Ostler about Father Stone's background. He examined the correspondence between the Diocese of Ogdensburg and Bishop Brodeur, and learned that Father Stone had a history of sexual relations with teenage boys. Bishop LaRocque testified that he thinks he may have also spoken to Bishop Brodeur, who lived with him at that time.

Bishop LaRocque knew that Father Stone had a sexual problem and that his victims were often teenaged boys. He was aware of the difficulties in the Diocese of Ogdensburg as well as in the Diocese of Alexandria in 1963. Bishop LaRocque was also well aware that Father Stone had been convicted of a sexual offence in New York. As he wrote on October 14, 1981, Father Stone "has been working in the diocese of Albany, N.Y. but had to leave because of an affair with boys." Bishop LaRocque refers to Father Stone's "life-long weakness" and his sexual relations with teenaged boys, known as ephebophilia. The Bishop knew that Father Stone had been undergoing treatment at the Southdown Institute, where priests in North America seek counselling and treatment for various problems such as alcoholism, drugs, and sexual problems. The Southdown Institute was sponsored by the Bishops of Ontario.

Father Stone had been staying with Father Ostler at the St. John Bosco rectory since he left Southdown. Bishop LaRocque knew that Father Stone was on probation and was required to report to a probation officer in Cornwall. That probation officer may have been Ken Seguin. Mr. Seguin was copied on correspondence from Immigration officials concerning Father Stone, and Mr. Jos van Diepen testified that he believes that Mr. Seguin was Father Stone's probation officer.

Bishop LaRocque did not contact either the diocese in Albany, New York, to discuss the conviction or the Southdown treatment facility to seek information on the diagnosis and progress of Father Stone's treatment. The Bishop

agreed at the hearings that as Bishop of Alexandria-Cornwall, he was the shepherd of the flock for the parishioners in his Diocese and was responsible for protecting people in the community as much as possible from physical and spiritual dangers.

Bishop LaRocque testified that he had reservations about allowing this priest to work in his Diocese after interviewing Father Stone and reading the Church files. He instructed Father Stone in the October 1981 interview “never to be alone with a boy(s) in a room or a car.” Bishop LaRocque sought work for Father Stone as a full-time chaplain at St. Joseph’s Villa and on a part-time basis at Mount Carmel House. St. Joseph’s Villa is a retirement home in Cornwall under the supervision of the Religious Hospitallers of St. Joseph. Sister Dolores Kane was the administrator at St. Joseph’s Villa. Mount Carmel House was an alcoholic rehabilitation centre in St. Raphael’s, about twenty minutes from Cornwall. Unlike St. Joseph’s Villa, Mount Carmel House was operated by lay people. The Bishop needed to seek permission from the Canadian government for Father Stone to work at these two institutions in Ontario.

Mount Carmel was located next door to Iona Academy, an elementary school operated by the Catholic school board for children up to grade 8. The eldest students were thirteen or fourteen years old. Father Stone was permitted to wear his collar. He was considered a trusted figure in the community because of his religious position. Yet Bishop LaRocque did not warn the administration of the school of Father Stone’s background and that he would be working in very close proximity to the school. He did not inform school officials of Father Stone’s history of sexual activities with children. Bishop LaRocque acknowledged at the hearings, “[T]hat should have been done.” The Bishop appeared to be preoccupied with avoiding scandal in the Diocese and was less focused on the protection of children. His response to a question on that subject by counsel at the Inquiry follows:

COUNSEL: Is it fair to say that the balance between avoiding scandal and other considerations, such as in this case, the safety of the children, at that time, it was more balanced towards avoiding scandal?

MSGR. LAROCQUE: It would seem so.

One of the priest’s alleged victims of sexual abuse, Fernand Vivarais, testified that he was eleven or twelve years old when Father Stone sexually assaulted him, around 1958 or 1959. Mr. Vivarais alleged that Father Stone had invited him to an Ice Capades show in Montreal and that the sexual assaults occurred in

a motel in Montreal. Mr. Vivarais testified that he met Father Stone at St. John Bosco Church.

Other priests in the Diocese were aware of Father Stone's past inappropriate behaviour with youths. Father Réjean Lebrun knew that Father Stone had left St. John Bosco Parish very suddenly in 1963. When he asked Father Desrosiers the reason for the quick departure of the priest, he was told that Father Stone had problems with young boys, "les petits gars." About two years later, when Father Lebrun was the chaplain of St. Lawrence High School in 1965, a student disclosed that Father Stone had committed acts of sexual misconduct on him. Father Lebrun simply advised the student to speak to the vocational (guidance) counsellor. Father Lebrun did not report the disclosure of abuse or try to determine whether Father Stone at that time was serving in another diocese. Father Lebrun explained at the hearings that he had not been trained in matters of sexual abuse and that as a young priest, who had been ordained only three years earlier in 1962, he would not have pursued this issue further:

À cette époque-là, on ne posait pas de questions. L'autorité l'avait remis et avec seulement trois ans de service, on posait pas de questions ... J'étais tout à fait pas préparé pour ça. Je me suis senti dépourvu.

Father Lebrun stated that he did not comprehend at the time the devastating effects of sexual abuse on young victims.

Father Lebrun was surprised that Father Stone returned to the Diocese of Alexandria-Cornwall in 1981. There was no discussion among the priests or by the Bishop to the effect that Father Stone should be monitored. When Father Lebrun asked Church officials why Father Stone was returning to Cornwall, he was told that the priest had been undergoing therapy and was now able to serve in the Diocese.

Bishop LaRocque testified that when he contacted St. Joseph's Villa and Mount Carmel House to seek work for Father Stone, he was likely to have disclosed the priest's sexual misconduct and "life-long weakness." He also stated that he would probably have discussed the conditions imposed on Father Stone, which included a prohibition on being alone with boys. Bishop LaRocque testified that he would have asked the individuals operating these institutions to contact him if a problem arose.

Bishop LaRocque was successful in finding chaplaincy work for Father Stone at both St. Joseph's Villa and Mount Carmel House. In a December 8, 1981, note to Father Stone confirming the positions, the Bishop reminded the priest that he was not permitted to be alone with youths:

Fr. Stone, I also include this personal and confidential reminder of our conversation: *it is understood that you will not be alone with any youth in your car, or room in this diocese or in Malone and area.* (Emphasis added)

Father Stone was required to continue his treatment as an outpatient at Southdown and to report to his probation officer.

Bishop LaRocque wrote to Immigration in June 1982, asking the federal government to grant permission to Father Stone to allow him to work in Cornwall as a chaplain. He also wrote on October 12, 1982, to Ed Lumley, the Member of Parliament for Stormont-Dundas, as Father Stone's permit to remain in Canada was due to expire in seventeen days, on October 29. Mr. Lumley was a former mayor of Cornwall. Father Stone was required to return to Albany, New York, to apply for landed immigrant status. This could take up to six months. In the letter, Bishop LaRocque informed the federal politician that Father Stone had been convicted of a sexual offence in Albany and had received a suspended sentence. He stated that the Cornwall Probation and Parole Office was supervising Father Stone. Bishop LaRocque also conveyed the information that the priest had been treated at Southdown in Aurora, Ontario, and that he continued to see a psychiatrist at this treatment facility each month.

In the letter to Ed Lumley, Bishop LaRocque stated that the New York conviction for the sexual offence in Albany was "the first time that Father Stone was convicted on this or any other charge." Bishop LaRocque knew that there had been multiple incidents of inappropriate sexual conduct with young persons, including those reported by the Diocese of Ogdensburg, yet this was not communicated to the MP for Stormont-Dundas. The Bishop did not mention the problems in the 1950s or '60s, or Father Stone's sexual misconduct prior to Ogdensburg. When he gave his evidence, Bishop LaRocque acknowledged that it probably would have been "more prudent" to disclose the other incidents of sexual misconduct. The Bishop agreed that this letter to Mr. Lumley did not contain a complete account of Father Stone's past. This, he said, is known in the Roman Catholic Church as "mental reservation"—limiting the amount of information that is disclosed.

In the concluding paragraph of the letter, Bishop LaRocque argued that Father Stone's case "warrants special consideration" and asked the federal politician to take appropriate measures to ensure that the priest could continue his excellent work at St. Joseph's Villa and Mount Carmel House. He also stated that the loss of Father Stone would place him in a difficult position, as there were no other priests in the Diocese to replace him. The Bishop wrote:

He has shown himself responsible both in his personal conduct and in his ministry. Due to his role in the community, I would ask you to keep this matter confidential. I believe his case warrants special consideration and I would ask you to do whatever you can to assist in this matter. We both realize that as I ask this, there is a time factor of 17 days at play.

My sincere thanks for whatever you can do to help me in this matter. If he were to go, I have no priest to replace him in the work he is doing.

In my view, the Bishop seemed more concerned with retaining Father Stone than with the protection of children and youths in the community.

Bishop LaRocque met with Minister Lloyd Axworthy in Ottawa on December 22, 1982, to seek permission for Father Stone to remain in Canada on a Minister's Permit, which was renewable each year. Mr. Axworthy was the Minister of Employment and Immigration at that time. Bishop LaRocque testified that this was the first and only occasion on which he contacted a Cabinet minister with regard to the work status of a priest in the Diocese.

A Minister's Permit for Father Stone was granted. However, Minister Axworthy imposed the following seven conditions in his correspondence to the Bishop in January 1983:

1. You will be personally responsible for Father Stone and his behaviour in Canada and are willing on all occasions to answer for it;
2. Father Stone will remain in the same or similar duties in the Cornwall area, i.e., working only with geriatric cases or alcohol rehabilitation cases;
3. Father Stone will not be allowed to work with young people;
4. Father Stone will continue to undergo his rehabilitative therapy on a regular basis as he is presently;
5. Father Stone will continue to enjoy the support of a group of religious Fathers as he does presently;
6. You will be responsible for maintaining a strict control on Father Stone;
7. Decision to renew the Minister's Permit will be made following an annual review.

Minister Axworthy made it clear in this correspondence that the Canadian Immigration Centre in Cornwall had been notified of the conditions attached to this Minister's Permit and would be interviewing Father Stone.

Bishop LaRocque informed the Minister of Employment and Immigration by letter a few days later that he accepted these conditions. Bishop LaRocque agreed to be personally responsible for Father Stone's behaviour while he was in Canada. The Bishop knew that Father Stone had been convicted of a sexual offence involving minors in the United States, that Church officials in the Diocese of Ogdensburg did not want Father Stone in their area, that Father Stone had brought boys to a camp several times in Ogdensburg, and that the priest had engaged in sexual misconduct prior to serving in the Diocese of Ogdensburg. Bishop LaRocque also knew that Father Stone had committed a "misdemeanor" in Cornwall in 1963. Yet despite this priest's history of misconduct and his sexual activities with boys and young men, Bishop LaRocque spent considerable effort and took extraordinary steps to ensure that Father Stone could remain in the Diocese of Alexandria-Cornwall. The Bishop agreed at the hearings that this was "very unusual."

When asked to explain why he went to such lengths to ensure that Father Stone remained in the Diocese, the Bishop replied that he wanted to give Father Stone "a chance" and that a very well-respected priest, Father Ostler, had asked him to find work for the priest. In my view, these were not convincing reasons. Bishop LaRocque was willing to risk the protection of children and youths because Gary Ostler, a highly regarded priest, had recommended Father Stone and the Bishop wanted to give Father Stone another "chance." In view of Father Stone's behaviour over more than two decades of sexual relations with young people, there was a serious risk that this priest would continue to sexually assault young persons.

Bishop LaRocque devoted additional time and effort over the next few years to ensure that the Minister's Permit for Father Stone was extended. In February 1985, Mr. Fern Lebrun, manager of the Canadian Immigration Centre in Cornwall, sent a letter to Father Stone indicating that it was very unlikely that the Minister's Permit would be extended beyond January 24, 1986. Mr. Lebrun told Father Stone to make the necessary arrangements to leave Canada by that date. Father Ostler was copied on this government letter, as was Ken Seguin, a probation officer in the Cornwall Probation and Parole Office. As discussed in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services, there were allegations by several witnesses at the Inquiry that Mr. Seguin had sexually abused young people, including his probationers.

Bishop LaRocque responded to Mr. Lebrun's letter and sent a copy of his correspondence to Flora MacDonald, Minister of Immigration at that time. The Bishop wrote that it was unusual to respond to "copied letters," but that he "must make an exception" because of the great importance of Father Stone to the Church. Bishop LaRocque acknowledged at the hearings that he expressed very

strong concerns to the Minister and to the manager of the Canadian Immigration Centre in Cornwall regarding the federal government's decision not to extend Father Stone's permit to remain in Canada:

Dear Mr. Lebrun:

Re: File 3105-11107

Usually I do not answer copied letters, but the matter of your February 12th letter to Father Stone is of such importance to me and the Church of Alexandria-Cornwall that I must make an exception.

I wish to inform you that I am totally satisfied with the work of Father Stone; he has proven to me and I would hope to others that he is a responsible person at the service of a very important group of elderly people who would be deprived of pastoral services were your permission for him to continue his stay in Canada to be effected [sic] January 24th 1986.

I wish to inform you that I will take every measure possible to see that Father Stone be allowed to stay among us in order to continue his ministry.

If I may comment on your final sentence of Father Stone, it seems rather ironical that you should state "hoping that this will not cause you any inconveniences," since it will not only inconvenience Father Stone, but myself, and especially the over 100 elderly people, the patients at the General Hospital at Cornwall and the priests of the diocese to whom he renders great service.

Sincerely yours,

+ Eugene P. LaRocque
Bishop of Alexandria-Cornwall

Bishop Receives Complaints About Father Stone: Priest Instructed to Leave the Diocese

Two months after Bishop LaRocque wrote to the federal government praising Father Stone and urging that his Minister's Permit be extended so that the priest could remain in Canada, Bishop LaRocque received a number of complaints about the priest.

Sister Kane, the administrator of St. Joseph's Villa, met with Bishop LaRocque to advise him that Father Stone was receiving young men at his apartment. This was clearly in breach of the conditions under which Father Stone was permitted to work in the Diocese. Sister Kane also complained that Father Stone was quick tempered with staff at the Villa.

The Bishop confronted Father Stone with these allegations, but the priest denied that he had engaged in improper behaviour with young men. This was conveyed to Sister Kane by the Bishop. Sister Kane was disappointed and upset by the Bishop's response. Sister Kane had verified the information regarding Father Stone's inappropriate conduct and she urged the Bishop to take measures to address the situation. In her June 9, 1985, letter to Bishop LaRocque, she wrote, "Everyone is hesitant to say anything about a priest." Sister Kane stressed that this was a serious matter and that she was concerned about the reputation of St. Joseph's Villa as well as the negative repercussions for the Bishop if he failed to take any action. Sister Kane reminded Bishop LaRocque that he had promised the federal government he would ensure that Father Stone did not engage in inappropriate behaviour. Sister Kane wrote:

I was disappointed in your telephone response to me on Friday. It was very difficult for me to go to see you and discuss the matters I did with you on last Wednesday. As a religious of many years, I am very conscious and aware of the seriousness and delicacy of the situation and information which I was reporting. Serious effort was made to check the related facts in the matter.

Although I knew the past history of the person involved, I wanted to be fair in his regard. Your Grace, I do have to be concerned when I receive complaints and concerns for the reputation of the Villa, but my concern is no less for the reputation and well-being of this priest and for you too, since you did state that you had to vouch for him to the government.

As we discussed, everyone is hesitant to say anything about a priest. I have incident reports to share with you, but not everyone is willing to sign their name to a report—again because he is a priest. I am enclosing a few, as well as a list of those who would be willing to discuss these matters with you personally.

If you would be willing to meet with the department heads, I will gladly arrange a date and time agreeable to you. They are willing to meet with

you regarding the rudeness and unacceptable behaviour shown to their staffs. This also includes the *parade of young visitors with earrings who visit the area in back of the Chapel.*

...

You stated that the priest denied everything. I can appreciate his response. It would be very difficult for him to do otherwise. So your Grace, I am coming to you once again to ask you to review in depth this full matter. I know you will take the appropriate action.
(Emphasis added)

Sister Kane sent incident reports from staff at St. Joseph's Villa, as well as a list of employees who were willing to discuss Father Stone's conduct with the Bishop. Bishop LaRocque inscribed the following on Sister Kane's letter: "Seen at—frequenting St. Hubert restaurant with young men ... 17 to 19 years old appearance of ... homo ... using side door ... twice in nude in front of young girl ... going on for one year; more blatant in last 6 months."

Father Stone had lied to him. Bishop LaRocque decided he needed to take measures to deal with the priest's behaviour and his violation of the conditions of his stay in the Diocese. In his letter to Father Stone in early June 1985, Bishop LaRocque wrote that young men between seventeen and twenty-one years old had been visiting the priest's room and had been in the company of Father Stone in restaurants. The Bishop instructed Father Stone to leave the Diocese and the country "as soon as possible":

After our meeting last Wednesday I have received written and verbal corroboration of the fact that *three young men between 17 and 21 years of age have been up in your room, one after another and that this has been going on blatantly for the last six months.* You have also been seen in the company of the same individuals in various eating establishments.

I am therefore morally certain that you did not tell me the truth last Wednesday. Since you know how far I went to obtain permission for you to remain in Canada, I feel a tremendous "let-down."

From the time that you read this letter you no longer have the faculties of this Diocese; you are not to offer Mass to-morrow morning and you are to leave the Villa and Canada as soon as possible.

I am sorry that you did not take advantage of the opportunity that was offered you. *I pray that not too much harm has been done to the faith of the people who have witnessed your “modus vivendi.”* And I pray and shall continue to pray for your salvation.

Disappointedly yours,

+ Eugene P. LaRocque
Bishop of Alexandria-Cornwall
(Emphasis added)

In his resignation letter to Sister Kane on June 10, 1985, Father Stone did not apologize or express any regret. Nor did the priest admit any wrongdoing or acknowledge that he had been instructed to leave the Diocese. Father Stone simply writes: “Another pastoral year has come to an end and I believe that the time has come for me to retire from active ministry.” As Bishop LaRocque said at the hearings, Father Stone “didn’t tell the whole truth.”

But Bishop LaRocque himself did not disclose to the government the reason for Father Stone’s departure from the Diocese. In the June 21, 1985, letter to Mr. Lebrun of the Canadian Immigration Centre in Cornwall, Bishop LaRocque simply states, “Father Carl Stone has resigned as Chaplain of St. Joseph Villa and has returned to live in New York State.” He explains that it is therefore not necessary to extend the Minister’s Permit for Father Stone beyond the January 1986 expiry date. Bishop LaRocque did not inform the government that Father Stone had breached one of the conditions stipulated by the Minister of Immigration. Bishop LaRocque also did not contact the local police. Nor did the Bishop advise the Montfort Fathers of Father Stone’s misconduct and his return to the United States. Bishop LaRocque acknowledged in his evidence that “in retrospect,” it would have been prudent to advise the Montfort Fathers of the misconduct of Father Stone. The Bishop also agreed that “it certainly would have been the proper thing” to advise the Ministry of Immigration of the reason for Father Stone’s resignation and departure from the Diocese. Nor did the Bishop contact the Ministry of Correctional Services to inform Father Stone’s probation officer of the reason for the priest’s departure. And significantly, the Bishop made no effort to contact the potential victims of Father Stone to assess whether they required counselling or other support and resources to deal with the alleged sexual abuse perpetrated by the priest. Bishop LaRocque made no effort to determine if Father Stone joined another parish in Canada or in the United States after he left Cornwall. He took the position that “it was not really

my responsibility ... [W]hile he was here he was my responsibility, but not after he left my diocese ... I was relieved that he was gone.”

This was also the case when the Ontario Provincial Police (OPP) requested information from the Bishop during the Project Truth investigation. As I have discussed in fuller detail, the OPP asked Bishop LaRocque in 1998 to provide background information on a number of priests to assist the police in its investigation. One of the priests was Father Carl Stone. Bishop LaRocque simply provided the OPP with tombstone data, that is, the places at which Father Stone had worked. When Bishop LaRocque was asked by Commission counsel why he had not disclosed Father Stone’s history of sexual misconduct with youths and young men, the Bishop responded, “I would have willingly given it to them if they had requested it, but I didn’t think that that was part of their request.” Bishop LaRocque clearly understood that the mandate of the OPP and Project Truth was to investigate sexual abuse by priests in the Diocese of Alexandria-Cornwall. Yet the Bishop failed, in his written response to the OPP, to divulge important information on priests such as Carl Stone. The Bishop acknowledged in his testimony that “in hindsight,” perhaps he should have communicated this information to the police.

The Reverend Gordon Bryan was the assistant chaplain at St. Joseph’s Villa from 1972 to 1989. The Villa was a religious hospital, not administered by the Diocese. Prior to Father Stone’s appointment, Bishop LaRocque did not discuss with Gordon Bryan the priest’s inappropriate and sexual conduct. Bishop LaRocque did not convey the circumstances under which Father Stone was returning to the Diocese in 1981. Nor was Gordon Bryan asked to monitor Father Stone’s behaviour at the Villa. He knew that Father Stone had been in the Diocese in the late 1950s and early 1960s. He was aware that Carl Stone was American and that he had been in the United States for quite some time. When Father Stone left the Diocese in 1985, Gordon Bryan was unaware of the reasons for the priest’s departure from Cornwall.

In my view, Bishop LaRocque and the Diocese failed to sufficiently investigate allegations of inappropriate contact with young people by Father Stone. It is also my conclusion that Bishop LaRocque and the Diocese failed to inquire into Father Carl Stone’s background: with the Montfort Fathers religious community about his past sexual conduct, and with Southdown about his assessment and treatment. The Diocese and Bishop LaRocque also omitted to take appropriate action to identify potential victims in relation to the allegations of inappropriate contact with young persons involving Father Stone. Finally, the Diocese and Bishop LaRocque ought to have informed the Montfort Fathers religious community of the occurrences at St. Joseph’s Villa involving young persons and that Father Stone had left Canada.

Father Charles MacDonald

When Bishop Eugène LaRocque arrived in the Diocese of Alexandria in 1974, Father Charles MacDonald was a priest at St. Columban's Parish in Cornwall. Father MacDonald was ordained in June 1969 by Bishop Adolphe Proulx and was appointed assistant priest at St. Columban's. He worked with Father Kevin Maloney and Father Donald McDougald.¹⁴ In 1970, he assumed responsibility for the training of altar boys at St. Columban's and came into contact with David Silmser, John MacDonald, and C-3. He also became involved with week-end retreats for some of the youth groups in the Church. In February 1974, Bishop Proulx asked Father MacDonald to assume responsibility for the Cursillo Movement¹⁵ in the Diocese.

Questions were raised by Church officials even before Father MacDonald was ordained. Charles MacDonald attended Saint Paul Seminary from 1963 to 1969. At this time, he met Ken Seguin, a fellow theology student who, as previously discussed, became a probation officer in the Cornwall Probation and Parole Office. Many young people in the Cornwall community alleged that Mr. Seguin had sexually abused them, although Mr. Seguin took his life in November 1993 and was not criminally prosecuted. The institutional response of the Cornwall Probation and Parole Office and the Ministry of Correctional Services is discussed in detail in Chapter 5.

Charles MacDonald entered Saint Paul Seminary as a mature student. He had previously taught in elementary school for ten years. He was in his thirties when he attended Saint Paul Seminary; other theology students were twenty-one or twenty-two, more than ten years younger. A 1967 report from the seminary contained information that was critical of Charles MacDonald's conduct. Contrary to the rules of the seminary, Charles MacDonald was visiting the rooms of other seminarians: "*Conduit moins satisfaisante que les années passées, en ce qui a trait aux visites aux chambres entre séminaristes.*"

In this report, the rector of Saint Paul Seminary, Rosaire Bellemare, wrote that Charles MacDonald was aggressive, overbearing, did not readily accept correction, did not forgive easily, and had a spirit of revenge. This was clearly not a positive evaluation. In fact, the rector did not give Charles MacDonald any assurance that he would be accepted into the seminary the following year:

14. He became Monsignor McDougald in December 1980.

15. The Cursillo Movement focuses on training lay people to become effective leaders and to communicate Christian teachings and principles. Generally over the course of weekends, priests and lay people make presentations to individuals who are expected to participate further in the movement.

VUE D'ENSEMBLE: Défavorable. Je serais étonné qu'il persévérât.
De toute façon, je ne serais pas prêt pour le moment à donner
l'assurance que nous l'accepterions pour une autre année.

Charles MacDonald spent the summer with Monsignor Proulx, improved his attitude, and returned to the seminary. He completed his years of study and, as mentioned, was ordained in 1969. At that time, there was no trial period before ordination. Bishop LaRocque explained in his testimony that once a student completed his studies at the seminary, he was ordained.

When Father MacDonald became responsible for the altar server program at St. Columban's Parish in 1970, there was no screening or interviews by the Church for priests who would be interacting with these young boys. Nor was there additional supervision of these priests. Screening was implemented in the Diocese in 2000.

In 1975, Bishop LaRocque appointed Father MacDonald pastor of St. Anthony's Parish in Apple Hill and Monkland. It was a smaller parish than St. Columban's and Father MacDonald was the sole priest. He was responsible for all the programs and activities at the church, including the altar boys. Father MacDonald also became involved in the COR Movement, the English equivalent of the French "R3" Rencontre Movement. Youths entered the program in high school as early as grade 9. Initially, Father MacDonald and Father Kevin Maloney shared responsibility for the anglophone youths, but Father MacDonald soon became solely responsible for this Church program. Father Gilles Deslauriers and Father Denis Vaillancourt were responsible for the francophone counterpart, the R3 program.

In 1983, Father Charles MacDonald was appointed chaplain of Bishop MacDonell School. He had been moved in 1982 from St. Anthony's to St. Mary's Parish in Williamstown. Again, he was the sole priest of that parish. Bishop MacDonell School, a Catholic school for grade 9 and 10 students at that time, was scheduled to open in the fall of 1983. Father MacDonald was the first chaplain of this school, where he worked on a part-time basis. He continued to be the pastor of St. Mary's Parish. When grades 11, 12, and 13 were added to this high school, it was renamed St. Joseph's Secondary School.

In 1988, Bishop LaRocque appointed Father MacDonald pastor of St. Andrew's Parish. The priest remained at that church until his resignation in October 1993, which occurred as a result of allegations of sexual abuse of young persons.

David Silmsen Contacts the Church: Allegations of Sexual Abuse by Father Charles MacDonald

It was in December 1992 that thirty-four-year-old David Silmsen decided to contact the Roman Catholic Church to disclose that a priest, Father Charles MacDonald, had sexually abused him when he was a boy.

Mr. Silmser initially made contact with Mr. Guy Levac, assistant to the Bishop in Ottawa, who referred him to the Diocese of Alexandria-Cornwall.

David Silmser called Mr. Levac back and told him that the person to whom he spoke at the Diocese of Alexandria-Cornwall was not interested in helping him. Mr. Levac decided to contact Monsignor Peter Schonenbach, the Bishop's delegate for the Archdiocese of Ottawa. Monsignor Schonenbach offered to assist Mr. Silmser even though this matter did not fall within his jurisdiction.

Monsignor Schonenbach spoke to David Silmser on December 9, 1992. Mr. Silmser disclosed that when he was an altar boy at St. Columban's Parish, Father Charles MacDonald had sexually molested him. He said that Ken Seguin, a probation officer, had also sexually abused him. Mr. Silmser told Monsignor Schonenbach that he had been in and out of prison for ten years. He mentioned that he had contacted the police about the allegations. Mr. Silmser said that when he contacted the Diocese of Alexandria-Cornwall, Monsignor Bernard Guindon had not been receptive and had responded, "What do you expect me to do?" Monsignor Schonenbach considered the allegations serious and had no reason to believe the story was fabricated.

Monsignor Schonenbach decided to call the Chancellor at the Diocese of Alexandria-Cornwall, Father Denis Vaillancourt, after speaking to David Silmser. On December 9, 1992, he spoke to Father Vaillancourt, who did not appear to be aware of the Silmser allegations. The Cornwall priest asked Monsignor Schonenbach to contact Monsignor Donald McDougald, the Bishop's delegate for issues of this nature. This was done on the same day. It was decided that Monsignor Schonenbach would obtain further information on the Silmser allegations and forward them to Monsignor McDougald.

Monsignor Schonenbach testified that when confronted with David Silmser's allegations, either Father Vaillancourt or Monsignor McDougald responded, "It's simply not possible because Charles is such a wonderful priest." It was evident to Monsignor Schonenbach that clergy in the Diocese of Alexandria-Cornwall were "having real difficulty in coming around to realizing that this good priest could have done this." As Monsignor Schonenbach testified, "The real horrible thing about it is you can have a man who is doing wonderful pastoral work and hiding all of this."

Monsignor Schonenbach met with David Silmser at the Diocesan Centre in Ottawa the following day to discuss his allegations of abuse. On December 11, 1992, he wrote a letter to Monsignor McDougald, providing details of his meeting. His intention was to communicate that he considered these allegations to be serious and that he thought Monsignor McDougald should meet with Mr. Silmser.

In the letter, Monsignor Schonenbach conveyed the following. As a boy, David Silmsr was a devoted altar server at St. Columban's Church in Cornwall. When the boy was thirteen, Father Charles MacDonald took an interest in him and invited him to his office to talk. On one such occasion, Father MacDonald told David Silmsr that he sometimes "masturbated in front of a window when girls were passing by." When David was fourteen years old, Father MacDonald invited him to go for a drive in the country. The priest parked his car at an isolated location and suggested that they have "sex together." David Silmsr told Monsignor Schonenbach that he ran from the car but was caught by Father MacDonald, who forcibly pushed him to the ground and "violated" him.

Mr. Silmsr told Monsignor Schonenbach that the sexual abuse by the priest radically changed his life. He began to drink and became involved in petty crimes. David Silmsr said that when he disclosed the abuse to his parents, he was not believed.

Mr. Silmsr stated that his life had somewhat improved in the past few years; he was married and had two children and a job managing a trailer park. He explained to the Church official the reason why, as an adult, he was now contacting the Church. Monsignor Schonenbach wrote the following in the December 1992 letter to Monsignor McDougald:

He told me he was raising the matter at this time because he wanted to lose the label of being a bad person, he said: "for starters, I would like a letter from Father MacDonald acknowledging what he did so that I could show this to my mother." (Emphasis added)

Mr. Silmsr was focused on receiving a letter from Father MacDonald that acknowledged the abuse. It was apparent to Monsignor Schonenbach that this man had serious problems and wanted his mother to understand the reason for his behaviour. In his correspondence to Monsignor McDougald, Monsignor Schonenbach indicated that David Silmsr appeared to be a "credible person."

Monsignor Schonenbach explained to Mr. Silmsr that Monsignor McDougald was responsible for matters of this nature in the Diocese of Alexandria-Cornwall. He gave him Monsignor McDougald's telephone number and encouraged David Silmsr to contact him. This is documented in the December 11, 1992, letter to Monsignor McDougald.

Monsignor Schonenbach sent a copy of the December 11, 1992, letter by registered mail to Bishop LaRocque. He wanted the Diocese to take this allegation seriously and for Monsignor McDougald to deal with Mr. Silmsr's concerns. As Monsignor Schonenbach testified, he wanted to ensure that "nothing was

swept under the rug.” Monsignor Schonenbach also sent by fax a copy of the December 11, 1992, letter to his Bishop, Archbishop Gervais.

Bishop LaRocque’s “first reaction” to the allegations in the letter was that this behaviour was “utterly out of character” for Father MacDonald. David Silmsers was pursuing this complaint in large part because he wanted his aging mother to understand his conduct in the past as a youth and as a young adult. He wanted his mother to change her view that he was a “bad person.” It was Bishop LaRocque’s recollection that after he read the correspondence from Monsignor Schonenbach, he would have instructed Monsignor McDougald to follow the 1992 protocol drafted by Father Vaillancourt about six or seven months earlier.

In an interview with the Ontario Provincial Police (OPP) in 1994, Monsignor McDougald indicated that he spoke to David Silmsers after receiving the December 11, 1992, letter from Monsignor Schonenbach. Mr. Silmsers reiterated that he was seeking an apology from Father MacDonald. However, Church officials at the Diocese of Alexandria-Cornwall did not make any arrangements to meet with Mr. Silmsers for two months. Monsignor McDougald claimed that he and other clergy at the Diocese were preoccupied with other matters such as the birth of Christ ceremonies and therefore did not address Mr. Silmsers’s concerns at that time. While I understand that the birth of Christ ceremonies are important to the Church, a two-month delay to meet Mr. Silmsers was clearly too long. The 1992 protocol states that the designated person is to meet the complainant within forty-eight hours.

On December 17, 1992, Monsignor McDougald met with Father Charles MacDonald. Father MacDonald was accompanied by his lawyer, Malcolm MacDonald. The meeting took place at the parish house at St. Andrew’s. Monsignor McDougald showed them the December 11, 1992, correspondence from Monsignor Schonenbach, detailing Mr. Silmsers’s allegations of sexual abuse by Father MacDonald.

According to the protocol, Monsignor McDougald was required to write a report of his meeting with the alleged aggressor and send it to the Bishop. However, Bishop LaRocque testified that he never read a written report of the meeting between Monsignor McDougald and Father Charles MacDonald, nor did he know if a written report had been filed in accordance with the protocol. Monsignor McDougald was also required, according to the protocol, to instruct Father MacDonald that he was not to have any contact with the victim or the victim’s family.

A few days later, Malcolm MacDonald wrote a letter to Monsignor McDougald restating that Father MacDonald denied the allegations made by David Silmsers. He also said that Mr. Silmsers’s allegations were vague, and he requested a detailed statement under oath from the complainant. Malcolm MacDonald stated that his

client was prepared to take a polygraph test and suggested that Mr. Silmser also undergo one. He wrote that Mr. Silmser had a criminal record for the following offences when he was a youth: theft of money from the Church, theft of a car when he was seventeen or eighteen years old, and embezzlement from his employer. Malcolm MacDonald also told Monsignor McDougald in this December 21, 1992, letter that he had contacted Bishop LaRocque to keep him apprised of this matter. According to Malcolm MacDonald, the Bishop told him to continue dealing with Monsignor McDougald with regard to the Silmser complaint. The Bishop testified at the Inquiry that he had no recollection of speaking to Malcolm MacDonald at this time about the Silmser matter.

It appears that the priest's lawyer was taking the lead on the issue and providing suggestions to the Diocese on how to proceed. The protocol states that the person designated by the Bishop is to receive and record the complaint. Mr. MacDonald, the priest's lawyer, wanted Monsignor McDougald to obtain a detailed statement from Mr. Silmser. It was after this was communicated to David Silmser that he decided he did not want to co-operate and made contact with the police.

Malcolm MacDonald also contacted Monsignor Schonenbach. In correspondence from the Monsignor to the lawyer, it was evident that Mr. Silmser was not prepared to take a polygraph test or swear a statement. Monsignor Schonenbach made it clear to Father MacDonald's lawyer that "under the circumstances outlined," David Silmser "does not want to cooperate further" and that the complainant "intends taking matter to the Police."

The Diocese of Alexandria-Cornwall continued to involve Monsignor Schonenbach in the Silmser matter. In January 1993, Monsignor McDougald asked Monsignor Schonenbach to facilitate a meeting between Mr. Silmser and the alleged perpetrator, Father Charles MacDonald. Monsignor Schonenbach, in strong language, told Monsignor McDougald that he would not do so. He felt that he had become too involved in this matter and that this was the responsibility of the Diocese of Alexandria-Cornwall. This ended his involvement in the Silmser complaint. Bishop LaRocque acknowledged in his testimony that if Church officials in his Diocese had suggested that the victim meet with the alleged perpetrator, this was not appropriate and was contrary to the protocol.

According to the diocesan protocol on sexual abuse, the Children's Aid Society (CAS) was to be notified if a minor was involved. If the CAS was not notified, the complainant was to be told the reason for this decision. In the Silmser matter, the CAS was not notified. Bishop LaRocque stated that confusion existed as to whether it was necessary to contact the CAS in cases of historical sexual assault. Monsignor McDougald, according to the protocol, should have notified Mr. Silmser to give him the reason for the decision not to contact the CAS. Bishop LaRocque agreed that if this did not occur, there was a breach of the protocol.

Bishop LaRocque testified that he considered the protocol a “serious guideline” for the Diocese. Initially, the Bishop took the position at the Inquiry that his delegate rather than he was responsible for ensuring compliance with the provisions in the protocol. However, the Bishop agreed in his testimony the following day that it was in fact his responsibility to ensure this protocol was followed. At the hearing, Bishop LaRocque said:

... I want to take full responsibility for the policy, the protocol, whatever we call it, and its—and the following of that protocol, and in no way do I want to blame my former Vicar General, Monsignor McDougald, for any of this.

I should have realized—that was the first time we were using the protocol and I should have monitored it much more closely.

Bishop LaRocque agreed that the allegations against Father MacDonald in December 1992 were serious. He had received Monsignor Schonenbach’s report on his meeting with David Silmsner and knew that Father MacDonald had denied the sexual molestation. The Bishop testified that he applied the test of “moral certitude” to decide whether to remove Father MacDonald from the ministry. He claimed that in December 1992, he did not have the moral certitude that Father MacDonald had had sexual contact with David Silmsner and was therefore not prepared to remove or even temporarily suspend the priest from his ministry. As the Bishop said at the hearings:

... I didn’t have the moral certitude that I needed at that time.

...

... I have to know—have at least the moral certitude that what is being said is true because remember I was dealing also with other accusations that came later but it was the same thing. I mean, if you remove a priest on the mere accusation of someone without having a moral certitude that it’s correct, I mean, I would have no priests left in the parishes.

Bishop LaRocque asserted that he had doubts about the credibility of David Silmsner’s allegations because Mr. Silmsner had not made his complaint earlier. More than seventeen years had passed before the former altar boy at St. Columban’s Parish made his complaint to the Church. Bishop LaRocque explained:

... [Y]ou can imagine why I had a sort of a doubt as to whether this accusation, made so late in history, why it had not been made sooner.

It would not have the effect that a—if it had been made sooner, then I think I would have been more convinced.

Clearly the Bishop did not understand the difficulties of disclosure of child sexual abuse. As discussed at the Inquiry by the expert witnesses on child sexual abuse, disclosure is particularly difficult when the alleged perpetrator is a priest, a revered person in the community, a person in a position of great trust and authority.

Bishop LaRocque did not suspend the priest pending the investigation of the Ad Hoc Committee. Nor did he impose restrictions on Father MacDonald's contact with children, teenagers, or young adults. As I discuss in this section, from late 1992 until October 1993, the Bishop took no action with regard to removing Father MacDonald from his ministry.

Church Officials in the Diocese of Alexandria-Cornwall Meet With David Silmsen, February 9, 1993

On February 9, 1993, David Silmsen met with Church officials at the Diocesan Centre in Cornwall. Monsignor McDougald, Father Vaillancourt, and Diocese lawyer Jacques Leduc were present. The purpose of the meeting was to receive details of Mr. Silmsen's complaint, to offer him psychological assistance, and to advise the Bishop.

David Silmsen introduced himself. He told the Church officials and Diocese lawyer that he was a father and that he came from a good family, but that because of traumatic experiences during his youth, he had served time in jail.

Jacques Leduc asked Mr. Silmsen most of the questions. David Silmsen told the Church officials that Father Charles MacDonald had sexually molested him several times when he was a teenager. The first assault, he alleged, took place when he was an altar boy, in the sacristy of St. Columban's Church. Further sexual assaults allegedly took place on Church retreats and in a deserted area north of the City of Cornwall, to which Father MacDonald drove David Silmsen in his car. The Church officials asked Mr. Silmsen to describe Father MacDonald's aggression and other details of the sexual assault, but he either refused or could not remember the requested details. Neither Mr. Leduc nor the Church officials had training on interviewing alleged victims of sexual assault.

As Father Vaillancourt stated, in 1992, there still was no training for clergy in the Diocese on issues of sexual abuse. This was despite the fact that there had been complaints of sexual abuse in the Diocese in the past, and Bishop LaRocque himself had been involved in dealing at an earlier time with the allegations of sexual abuse by Father Carl Stone and Father Gilles Deslauriers.

Mr. Silmsen made it clear that he wanted a letter of apology from Father MacDonald to be sent to his mother. There was no discussion or request on

his part for any financial compensation from the Church for the alleged sexual assaults perpetrated by the priest nor, as Jacques Leduc acknowledged, was there any threat by Mr. Silmsen that he would sue the Diocese. Inscribed in Father Vaillancourt's notes of the February 9, 1993, meeting is: "He stated that all he wanted was a letter of apology from Fr. MacDonald to be sent to David's mother."

Without having previously discussed this with the two clergy, Jacques Leduc asked Mr. Silmsen if he would meet with the alleged perpetrator, Father MacDonald. This request surprised Father Vaillancourt. Father Vaillancourt had drafted the 1992 protocol "Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants." Although these guidelines had not been officially adopted by the Council of Priests, Father Vaillancourt relied on them for the Silmsen complaint. As Father Vaillancourt said in his evidence, arranging a meeting between the victim of a sexual assault and the alleged perpetrator was clearly not one of the steps in the 1992 guidelines. It was threatening, intimidating, and frightening for an alleged victim who had mustered the courage to disclose the sexual abuse to the Diocese and who sought a public apology from the priest for the molestation so that his mother could understand his past conduct. I agree with Father Vaillancourt's assessment. Not surprisingly, David Silmsen did not want to meet with Father Charles MacDonald, the perpetrator who he alleged had sexually abused him.

Church officials offered David Silmsen psychological counselling to help him deal with his personal problems.

After the meeting and deposition of Mr. Silmsen, Father Vaillancourt, Monsignor McDougald, and Jacques Leduc discussed his complaint. Details had not been provided by Mr. Silmsen on some issues. They thought that David Silmsen either did not remember these details, was fabricating the complaint, or was simply refusing to provide the requested information. It did occur to Father Vaillancourt that Mr. Silmsen might not be comfortable sharing this information with the Diocese lawyer and clergy who were priests in the Diocese with Father Charles MacDonald. Monsignor McDougald suggested that contact be made with Father MacDonald's lawyer, Malcolm MacDonald, and possibly the Crown. Father Vaillancourt's notes say:

After he left, we shared on what we thought of his statement. We felt that some details were not given possibly because he didn't want to or that they had slipped his mind or that perhaps many things had been dreamed up. It was thought that Fr. Charles would never walk around in a group only dressed in his underwear. It was decided that we contact Fr. Charles' lawyer and he could talk with the accused and possibly the Crown Attorney.

Similarly, Jacques Leduc stated in a 1994 document to Diocese lawyer Peter Annis:

After hearing the complainant's story, we, as members of the Committee, agreed that his anguish appeared real and that he was extremely emotional by what occurred. We felt that he was either telling the truth or was one of the best actors possible. There was no doubt that we had some sympathy for his situation, but had a problem with his credibility as a result of his refusal to provide details or occurrences.

It was decided that Monsignor McDougald would report the meeting with David Silmsen to the Bishop.

There was no discussion regarding the preparation of a written report. According to the 1992 protocol, a written report of the meeting was to be prepared by the designate, who in this case was Monsignor McDougald. This was not done. Nor was a file opened as mandated by the 1992 protocol. Bishop LaRocque acknowledged that this violated the protocol. He also conceded that it was contrary to the principles of transparency and openness. Bishop LaRocque was well aware at that time that *From Pain to Hope* stressed the importance of openness and transparency. The Bishop also acknowledged that in the past, the Church had not always been forthright or transparent in cases of sexual abuse by priests and other clergy.

None of the Diocese officials at the February 9, 1993, Silmsen meeting suggested speaking to the Bishop about the removal of Father Charles MacDonald from his position as parish priest at St. Andrew's Church. They knew that the priest continued to have contact with children and youths. Nor did Bishop LaRocque consider removing Father MacDonald from active ministry. He claimed that he did not have the "moral certitude" that Father MacDonald had committed the acts alleged by Mr. Silmsen.

Bishop LaRocque was concerned about the perception of scandal in the Church. As discussed, *From Pain to Hope* describes how fear of scandal by Church officials in the past has resulted in inappropriate responses to allegations of sexual abuse:

... The fear of scandal often conditions our instinctive reactions of inadvertently protecting the perpetrators and a certain image of the Church or the institution we represent, rather than the children, who are powerless to defend themselves.

Bishop LaRocque acknowledged that fear of scandal raised in him an instinctive reaction of protection of the Church. He agreed in his testimony with the following statement in *From Pain to Hope*:

... The ideal breeding ground for the development and repetition of child sexual abuse is a general conspiracy of silence, motivated by the fear of scandal and of major repercussions for the institutions directly or indirectly concerned.

From about February 1993 until August 1993, the Silmsers matter essentially remained dormant.

Pressure on the Bishop to Settle With David Silmsers: A Difficult August Meeting With Bishop LaRocque

In a call in August 1993, Malcolm MacDonald, Father MacDonald's lawyer, told Jacques Leduc, the Diocese lawyer, that he wished to meet with the Bishop to discuss the David Silmsers matter. On August 25, 1993, Malcolm MacDonald and Jacques Leduc met with Bishop LaRocque in his office. There are no notes of the meeting. As I discuss in this section, it is noteworthy that there do not appear to be written documents or recorded notes of many of the discussions and meetings that took place with Diocese officials regarding the Silmsers matter. The Bishop testified that at this time, both Jacques Leduc and Malcolm MacDonald "were putting pressure on me" to settle the case.

According to Bishop LaRocque, these two lawyers argued that the benefits of entering into a monetary settlement with Mr. Silmsers were avoiding scandal in the Diocese and ensuring that Father Charles MacDonald's reputation was not adversely affected. It would enable Father MacDonald to continue his ministry. The two lawyers also maintained that this had been done in other dioceses of the Catholic Church. They told the Bishop that they thought David Silmsers would agree to a civil settlement.

Bishop LaRocque was initially resistant to the prospect of a civil settlement. The confidentiality of the settlement also concerned him. He understood that by settling, David Silmsers would be abandoning his right to sue the Diocese and also would be compelled to sign an undertaking not to disclose the settlement. The Bishop was worried about the perception that the Diocese was offering money to an alleged abuse victim for the purpose of silencing him. As Bishop LaRocque said, "[M]y thought process was that it would appear that the Diocese was giving this money in order to buy off and to shut up the victim."

Bishop LaRocque asked whether a civil settlement by the Diocese with Mr. Silmsers would have an impact on the criminal investigation by the police. He testified that the lawyers assured him that a civil settlement would have no effect on the criminal process. However, Jacques Leduc conceded at the hearings that it was his hope that the civil settlement would resolve all matters, including the criminal issues surrounding this case.

Bishop LaRocque knew that a prime purpose of David Silmsen's contact with the Church in December 1992 and his disclosure of the sexual abuse, was to obtain a written apology to give to his mother to explain his past behaviour. Yet no discussion took place between the Bishop, Jacques Leduc, and Malcolm MacDonald regarding an apology to Mr. Silmsen by Father Charles MacDonald or the Church. Nor did the Diocese lawyer, testified Bishop LaRocque, discuss at that time whether a proposed monetary settlement with David Silmsen would be covered by insurance or whether the Church insurer should be notified. At the August 1993 meeting, there was also no discussion about the amount of money that would be offered to Mr. Silmsen.

According to Bishop LaRocque, "a very heated argument" between him and the lawyers took place at the August meeting. Malcolm MacDonald and Jacques Leduc pressured him to agree to a civil settlement but the Bishop was not persuaded: "[T]hey were arguing strongly that I should do so, and I absolutely refused."

Mr. Leduc was angry at the meeting because Bishop LaRocque would not agree to the civil settlement. He thought a monetary settlement with Mr. Silmsen would help to "resolve a messy situation," protect Father Charles MacDonald's reputation, and avoid legal costs if David Silmsen decided to sue the Diocese. He said the following in a statement to Mr. Annis:

The Bishop was adamant against settling. He was concerned about being seen as covering up and felt that the truth should come out in the criminal proceedings if that was the case. At the end of the meeting he told us that the Diocese would not participate in any settlement.

I left the meeting feeling very angry. I thought from my experience in these matters that settlement represented a good opportunity to resolve a messy situation, to protect the reputation of the priest, which would be destroyed by any legal proceedings, regardless of his innocence, and to avoid incurring unnecessary costs in defending the civil suit.

In the spring or summer of 1993, Jacques Leduc had learned that there had been other complaints of inappropriate sexual behaviour by Father Charles MacDonald in the past. Monsignor McDougald had conveyed this information to the Diocese lawyer. But Mr. Leduc did not raise this issue with the Bishop either at the late August meeting or at a second meeting with the Bishop in early September 1993, when they discussed the prospect of a civil settlement. I would have expected a lawyer concerned with the best interests of his client to have advised the Bishop of the existence of these other claimants, who also alleged they had been victims of inappropriate sexual behaviour.

Advice for Bishop LaRocque at the Canadian Conference of Catholic Bishops

A couple of days after the meeting in August 1993 with lawyers Malcolm MacDonald and Jacques Leduc, Bishop LaRocque attended the annual meeting of the Canadian Conference of Catholic Bishops (CCCCB). As mentioned, the report *From Pain to Hope* had been released the previous year. It stressed the principles of transparency and openness by the Church, the need for the Diocese to conduct investigations of allegations of sexual abuse, notification to the appropriate authorities, and compassion for the victims of abuse. *From Pain to Hope* contained the following statement: “We would like to see our Church guided by a spirit of openness and truth when responding to allegations of child sexual abuse by a priest or a religious.”

There had been allegations of sexual abuse by clergy in Newfoundland and in Ontario at that time, some of which had been publicized in the media. In a closed session at the CCCC, child abuse by clergy and the responsibilities of bishops in such cases were discussed. Bishop LaRocque decided to raise the Silmsner matter at this closed session, without identifying the priest or the alleged victim. Bishop LaRocque told the bishops that he had a case in his Diocese in which a person alleged that he had been abused twenty years earlier by a priest. He explained that the Diocese lawyer as well as the lawyer for the priest were trying to convince him to settle the matter by offering money to the alleged victim. About ninety bishops attended this closed session. Bishop LaRocque was strongly urged by his fellow bishops not to enter a monetary settlement. As the Bishop of the Diocese of Alexandria-Cornwall said at the hearings, the bishops “advised me against it because it would be seen as ... trying to buy the silence” of the victim. The bishops agreed with the position Bishop LaRocque had taken in his first meeting with lawyers Jacques Leduc and Malcolm MacDonald a few days earlier. But as Bishop LaRocque acknowledged at the Inquiry, “My regret has been ever since that I didn’t keep the same decision in the second meeting.”

A Second Meeting With the Bishop: Agreement to Settle Civilly With David Silmsner

Father MacDonald’s lawyer, Malcolm MacDonald, was intent on pursuing a civil settlement with the Diocese. He contacted Jacques Leduc after the August 25, 1993, meeting, and asked the Diocese lawyer to arrange a second meeting with Bishop LaRocque to further discuss the Silmsner case. He told Mr. Leduc that he had contacted Mr. Silmsner, who was prepared to agree to a settlement for \$32,000.

A meeting with Jacques Leduc and Malcolm MacDonald was arranged for September 1, 1993, after Bishop LaRocque returned from the CCCB. The Bishop, in hindsight, regretted that he had not asked the bursar, the Reverend Gordon Bryan, to attend this meeting, at which he was ultimately persuaded by the two lawyers to enter a civil settlement with David Silmser. Again, there are no notes of this meeting.

The lawyers told the Bishop that David Silmser needed money for psychological treatment and counselling. Bishop LaRocque agreed that an offer to provide financial assistance to Mr. Silmser for counselling and psychological therapy should be made, as the Diocese had done so in the past for some of the sexual assault victims of Father Gilles Deslauriers. According to the Bishop's recollection, Malcolm MacDonald said that contact had been made with Mr. Silmser, who needed \$20,000 for counselling costs and \$12,000 as compensation for damages for the alleged sexual abuse. Malcolm MacDonald said he would find the other \$12,000, but did not provide details. The Bishop was not told how that amount was arrived at, nor that Malcolm MacDonald had negotiated this sum with David Silmser, who did not have legal representation when this discussion of the settlement costs occurred. Both Malcolm MacDonald and Jacques Leduc were anxious for the Diocese to enter this settlement. Mr. Leduc "in very forceful terms" tried to persuade the Bishop to agree to the settlement. It is noteworthy that the Diocese lawyer did not suggest that payment for psychological treatment for David Silmser could be made on a "without prejudice" basis.¹⁶ This in fact had been done for victims of Father Deslauriers.

Bishop LaRocque testified that his principal concern, which he stressed to the two lawyers, was that the civil settlement entered into by Mr. Silmser have no effect on the criminal investigation by the police or on the criminal process as a whole. At the hearings, the Bishop maintained that he was persuaded to enter the settlement on the basis that the Church needed to fulfil its undertaking to pay Mr. Silmser for counselling and psychological treatment. The Bishop also conceded that he had agreed to the civil settlement because he wanted Father MacDonald to continue exercising his ministry. The lawyers also discussed with the Bishop the importance of avoiding scandal with respect to the Church and ensuring that Father MacDonald's reputation was not adversely affected. Bishop LaRocque knew that Mr. Silmser would be asked by the lawyers to sign a release to the effect that in exchange for the monetary payment, he would not sue the Diocese. He was also aware that a confidentiality provision would be included in the settlement documents to prevent Mr. Silmser from discussing the settlement with third parties.

16. "Without prejudice" means without implying an admission of liability or without abandoning a claim, privilege or right.

The Bishop understood that the civil settlement would take place soon after this meeting. “That is where,” Bishop LaRocque said, “I made my mistake. I should have consulted with Mr. Bryan ... and I suppose Monsignor McDougald since he was my delegate. But I did not do so and I left that in the hands of the lawyers.”

It was Bishop LaRocque’s understanding that the total settlement with David Silmsen would be in the amount of \$32,000: \$20,000 for counselling to be paid by the Diocese and \$12,000 that Malcolm MacDonald would obtain from other sources. This was contrary to the information conveyed by the Bishop to Chief Claude Shaver of the Cornwall Police Service (CPS) that the funds were from three parties. A cheque in the amount of \$27,000, not \$20,000, was sent to Mr. Leduc’s law firm from the Diocese of Alexandria-Cornwall on September 2, 1993. The contributors and the amounts in the settlement were never satisfactorily explained at the Inquiry.

Bishop LaRocque thought that it was necessary to receive approval from the finance committee of the Diocese for payments that exceeded \$10,000. In fact, the Bishop was incorrect; committee approval for payments that exceeded a specified monetary amount was applied to the parishes, not the Diocese. The finance committee consisted of priests and lay persons who advised the bursar on the finances of the Diocese. Bishop LaRocque believed that if this permission had been sought, the committee would not have approved the civil settlement negotiated by Malcolm MacDonald and Jacques Leduc on behalf of the Diocese. The Bishop thought, in hindsight, that he should have sought the advice of the bursar and the financial committee before the cheque from the Diocese was issued.

Bishop LaRocque testified that he had no involvement in the preparation of the documents for the civil settlement. He knew that the release would be drafted but did not know who was responsible for preparing it, nor its precise wording. The Bishop had made it clear to the lawyers that the civil settlement should have no effect on the ongoing criminal process. Bishop LaRocque never asked Diocese lawyer Jacques Leduc to review the civil settlement documents before they were signed by Mr. Silmsen. The Bishop testified that he would never have authorized the settlement with David Silmsen if he had known that the documents contained a clause that imposed a halt to the pursuit of criminal proceedings.

Jacques Leduc testified that he advised the Bishop that \$32,000 was a good settlement and that it would cost that amount or more for the Diocese to defend such an action civilly.

Jacques Leduc knew from Monsignor McDougald prior to the September 1 meeting with the Bishop that there had been other complaints of inappropriate sexual conduct by Father MacDonald. Yet the Diocese lawyer does not recall discussing these complaints at the meeting with the Bishop, at which he argued forcefully for the Bishop to enter a civil settlement with David Silmsen. It should

have been evident to Mr. Leduc that had he provided this information to Bishop LaRocque, the Bishop may not have agreed to the settlement. The Bishop claimed that he became aware of the other alleged victims only in October 1993, when Chief Shaver met with him in his office.

Despite the fact that Bishop LaRocque had raised the Silmsers case at the CCCB and had been advised not to agree to a civil settlement, the Bishop of Alexandria-Cornwall succumbed to the pressure of Father Charles MacDonald's lawyer and Diocese lawyer Jacques Leduc. "I've regretted it ever since," said Bishop LaRocque in his testimony at the Inquiry.

As I discuss later in this Report, Jacques Leduc claimed that prior to the signing of the release, Malcolm MacDonald told him that he had advised the local Crown, Murray MacDonald, about the preparation of the civil settlement and that the Crown Attorney had no concerns with it. Mr. Leduc also testified that he saw Murray MacDonald in the hallway of the Provincial Court, probably in the last week of August 1993, and that the Crown confirmed that Malcolm MacDonald had apprised him of the proposed settlement between the Church and Mr. Silmsers and "he had no problems with this." By contrast, Murray MacDonald testified that this discussion did not take place at the courthouse but rather that Mr. Leduc telephoned him to inform him of the settlement. The Crown attorney said he made it clear to Mr. Leduc that the criminal process would continue. This is discussed further in the chapter on the institutional response of the Ministry of the Attorney General.

Preparation of the Release Signed by David Silmsers

Mr. Leduc left the Bishop's office with Malcolm MacDonald, with instructions to proceed with the civil settlement. The lawyer for the Diocese discussed with Malcolm MacDonald the documents that needed to be drafted. He testified that he also told Mr. MacDonald that David Silmsers must obtain independent legal advice prior to signing the release and the undertaking not to disclose. Mr. Leduc told Father MacDonald's lawyer that a certificate of independent advice should be attached to the documents signed by David Silmsers.

Mr. Leduc testified that it was agreed that Malcolm MacDonald would prepare the civil settlement documents. But Mr. Leduc received a call from Father MacDonald's lawyer requesting his help, as Malcolm MacDonald practised principally in the area of criminal law. Mr. Leduc had previously acted for victims of abuse by clergy in Quebec, and agreed to search for a legal precedent that could assist in the drafting of the release and the undertaking not to disclose.

Mr. Leduc testified that he dictated a draft of the release, which was typed by his secretary. There was no reference to withdrawing from the criminal

investigation. He sent the document to Malcolm MacDonald by fax, who returned it with changes. The document altered by Mr. MacDonald contained references to criminal proceedings, which Mr. Leduc stroked out. Mr. Leduc testified that he wanted all references to criminal matters removed from the document as Bishop LaRocque had made it clear in his instructions that the settlement was in no way to affect the criminal investigation or criminal proceedings. Mr. Leduc stated that he called Malcolm MacDonald to confirm that all references to criminal proceedings were deleted from the document. Mr. Leduc knew that inserting a clause that impeded the criminal process would be void and against public policy.

Mr. Leduc also testified that the document he drafted was not the document that was signed by David Silmsen. He testified that the release he prepared did not contain a clause that referred to the criminal process. However, it is essential to note that the document signed by David Silmsen and witnessed by his lawyer, Sean Adams, on September 2, 1993, contained a clause that stipulated that Mr. Silmsen could not undertake “any legal proceedings, civil or *criminal*” and was to “immediately terminate any actions that may now be in process.”

It is important to note that Mr. Leduc gave different accounts of this in a January 1994 press release, a February 1994 statement that he prepared, and an August 1994 interview with the OPP. For example, in the January press release, Mr. Leduc said that he did not see the offending section. In the February statement, Mr. Leduc said that he had prepared a draft release that did not contain a reference to a release against criminal actions, that Malcolm MacDonald had made amendments to the document, and that Mr. Leduc had then called Mr. MacDonald to ask him to ensure that references to criminal matters were removed. When Mr. Leduc was interviewed by the OPP in August 1994, he said that the word “criminal” may have appeared but that he did not notice it. Mr. Leduc further stated in the OPP interview that had he noticed the reference to criminal matters, he would have asked Malcolm MacDonald to remove it.

I find it curious that Mr. Leduc did not open a file at his law office for the Silmsen matter. Mr. Leduc claimed that he has no notes of meetings or discussions that took place with respect to the Silmsen settlement. When asked how he knew how much time was spent on the file for the purposes of billing, he replied that he would “guesstimate” and rely on his memory.

Did Malcolm MacDonald, Jacques Leduc, or Sean Adams Contact Duncan MacDonald at the Time of the Settlement With David Silmsen?

Karen Derochie worked as a legal assistant for Cornwall lawyer Duncan MacDonald from approximately late 1992 or early 1993 until 1997. Duncan MacDonald’s legal practice was predominantly real estate and estate law. He was a sole practitioner.

Ms Derochie's employment with Duncan MacDonald ended in 1997 when Mr. MacDonald suffered a stroke. Mr. MacDonald died in 2000.

When Karen Derochie testified at the Inquiry, she recalled a meeting Duncan MacDonald had with Malcolm MacDonald and Jacques Leduc. According to Ms Derochie, the meeting took place in Duncan MacDonald's office and lasted about ten to fifteen minutes. It should be noted that Ms Derochie was familiar with both Mr. Adams and Mr. Leduc. Ms Derochie could not remember the precise date of this meeting but recalled that it was in either late 1992 or in 1993, shortly after she began working at Mr. MacDonald's law office. Ms Derochie testified that when the meeting concluded, Duncan MacDonald's face was red and he was visibly upset, unusual behaviour for her boss. According to Ms Derochie, he uttered something to the effect that "some things shake your faith in institutions or what you believe in." He also told Ms Derochie that if Mr. Sean Adams telephoned the office, he did not want to respond to the call. When Garry Guzzo testified at the Inquiry, he discussed a call he received from Duncan MacDonald regarding the Church's involvement in a financial settlement. Duncan MacDonald, he stated, was concerned about the settlement and sought the MPP's assistance. Duncan MacDonald wanted the government to look into the matter. As Mr. Guzzo related in his evidence, Duncan MacDonald said "the Church was involved, that we as Catholics should be concerned and I as a Conservative should be concerned."

Ms Derochie testified that she did in fact receive calls from Sean Adams either that day or the next, and conveyed the message that Duncan MacDonald was unavailable.

Karen Derochie further stated that a few weeks after Duncan MacDonald had the meeting with Jacques Leduc and Malcolm MacDonald, four people arrived at his office. They had not arranged an appointment. These four people, Ms Derochie testified, were Malcolm MacDonald, Jacques Leduc, Sean Adams, and an adult male whom Ms Derochie did not know. She asked the men to wait as Duncan MacDonald was not in the office at this time. When he arrived and observed these men, Duncan MacDonald promptly went upstairs to an office and called Ms Derochie. He told her that he did not intend to meet with these individuals and that they should be asked to leave the premises. This was the first time Ms Derochie had encountered such a situation. She complied with Duncan MacDonald's instructions and asked the men to leave the lawyer's office.

The testimony of Karen Derochie was inconsistent with the evidence of Jacques Leduc and Sean Adams. Mr. Leduc testified that he never went to Duncan MacDonald's office with Malcolm MacDonald. Nor, he said, did he visit Duncan MacDonald's office with Sean Adams and David Silmser. He maintained that he never went to Duncan MacDonald's office to discuss the Silmser

settlement. According to Mr. Leduc, the events described by Karen Derochie simply did not happen.

Sean Adams also testified that he did not attend a meeting at Duncan MacDonald's office relating to the Silmsers matter. Nor was he aware of a meeting between Duncan MacDonald, Malcolm MacDonald, and Jacques Leduc in the summer of 1993. Sean Adams also stated that he had no recollection of attempting to contact Duncan MacDonald by telephone. It is not for me to determine if and when these meetings took place but to point out some of the evidence that would have been available to explore had an in-depth investigation taken place.

Sean Adams' Involvement in the Silmsers Matter, Settlement Documents Are Signed

Sean Adams testified that he was reluctant to act for David Silmsers when he received his call. Mr. Silmsers explained that the Church was settling with him civilly in a case of sexual abuse by a priest but that the settlement funds would not be released unless he had a lawyer representing him to give independent legal advice. He asked Mr. Adams to meet him the following day at Malcolm MacDonald's office. Mr. Adams at that time practised solely as a solicitor. He testified that he told Mr. Silmsers he would recommend another lawyer, but Mr. Silmsers was anxious to settle the matter and wanted Mr. Adams to represent him. Sean Adams did not disclose to Mr. Silmsers that he had previously represented clergy in the Diocese of Alexandria-Cornwall. For example, in June 1992, Mr. Adams had done legal work for Father Gary Ostler at St. Columban's Church and also for priests at his parish, St. Clement's.

Mr. Adams decided to discuss the Silmsers request with Tom Swabey, a senior partner at his law firm. Mr. Swabey had previously done work for the Anglican Church. The senior partner suggested that Mr. Adams make it clear to David Silmsers that his retainer for independent legal advice was limited to witnessing Mr. Silmsers's signature on the settlement documents and giving him advice with respect to the release and undertaking not to disclose.

Mr. Adams agreed to represent Mr. Silmsers. He testified that there was urgency in Mr. Silmsers's voice and he wanted to help him.

Mr. Leduc testified that about a day before the civil settlement documents were signed, he became aware that Sean Adams was providing independent legal advice to David Silmsers. Mr. Leduc knew that Mr. Adams had previously done legal work for the Diocese. But Mr. Leduc did not raise with the Bishop or others that Sean Adams could possibly be in a conflict of interest with regard to representing Mr. Silmsers in this matter.

Mr. Adams met with Mr. Silmsers privately in Malcolm MacDonald's office on September 2, 1993. Mr. Adams read the release and undertaking not to disclose, as well as the certificate of independent legal advice. These documents had been prepared prior to Mr. Adams' arrival at the office:

FULL RELEASE AND UNDERTAKING NOT TO DISCLOSE

FROM: David Silmsers, Hamlet of Hammond, in the Counties of
Prescott & Russell

TO: Father Charles MacDonald and to the Most Reverend Eugene
P. Larocque, Bishop, and to his successors and assigns,
and to The Roman Catholic Episcopal Corporation for the
Diocese of Alexandria-Cornwall in Ontario.

1. In consideration of the payment to me, of the sum of—Thirty Two Thousand—(\$32,000.00)—00/100 DOLLARS receipt of which is hereby acknowledged, I, David Silmsers, of the Hamlet of Hammond, Province of Ontario, ... hereby release and forever discharge Father Charles MacDonald, The Most Reverend Eugene P. Larocque and the Roman Catholic Episcopal Corporation for the Diocese of Alexandria-Cornwall in Ontario, from any and all actions, causes of actions, claims and demands, for damages incurred or to be incurred, foreseen and unforeseen, for any loss, or injury, both physical, emotional or other, howsoever arising, which heretofore may have been, or may hereafter be sustained by me in consequence of any conduct, behavior or act done to me directly or indirectly by Father Charles MacDonald or by any other agent or employee of The Roman Catholic Episcopal Corporation for the Diocese of Alexandria-Cornwall in Ontario, including all damage, loss or injury not now known or anticipated but which may arise in future and all effects and consequences thereof.
2. *In addition to the aforesaid release and for the said consideration, I hereby undertake not to take any legal proceedings, civil or criminal, against any of the parties hereto and will immediately terminate any actions that may now be in process.*
3. In addition to the aforesaid release and for the said consideration *I further hereby undertake not to disclose or permit disclosure directly or indirectly of any of the terms of this settlement or*

of any of the events alleged to have occurred. Breach of this undertaking will constitute a breach of settlement agreement as evidenced by this release and I will refund all amounts paid to me forthwith.

4. And for the said consideration, I further agree not to make a claim or take any proceeding or participate in same, against any other person or corporation who might claim contribution or indemnity under the provisions of The Negligence Act and the Amendments thereto from the person, persons or corporations discharged by this release.
5. It is further understood and agreed that the said payment is deemed to be no admission whatsoever of liability on the part of the said Father Charles MacDonald, The Most Reverend Eugene P. Larocque, Bishop, his successors and assigns and The Roman Catholic Episcopal Corporation for the Diocese of Alexandria-Cornwall in Ontario.
6. I hereby authorize and direct the releasees to pay the said consideration to me.
7. I also acknowledge having received independent legal advice prior to executing this full and final release as evidenced by the Certificate of Independent Legal Advice signed by my solicitor and myself, attached hereto.

IN WITNESS whereof, I have hereunto set my hand and seal,
this 2nd day of September, 1993.

David Silmser
(Emphasis added)

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, SEAN ADAMS, of the City of Cornwall, County of Stormont, Barrister and Solicitor, DO HEREBY CERTIFY that I was this day consulted in my professional capacity by David Silmser, named in the annexed Full Release and Undertaking not to Disclose, dated the 2nd day of September, 1993 as to his obligations and rights under the said Full Release and Undertaking not to Disclose, that I acted solely for him

explained fully to him the nature and effect of the said Full Release and Undertaking not to Disclose and he did acknowledge and declare that he fully understood the nature and effect thereof and did execute the said document in my presence and did acknowledge and declare and it appeared to me that he was executing the said document of his own volition and without fear, threats, compulsion or influence by the releasees or any other person or persons.

DATED at Cornwall, this 2nd day of September 1993.

Sean Adams

ACKNOWLEDGMENT

I, hereby acknowledge that Sean Adams fully explained the nature of the Full Release and Undertaking not to Disclose and the effect of my signing it. I confirm that I understand the nature and effect of the document, I have executed it freely and voluntarily, I have given complete disclosure and I am satisfied with the disclosure provided by the release and confirmed by my solicitor.

DATED at Cornwall, this 2nd day of September, 1993.

David Silmsr

ACKNOWLEDGMENT

I hereby acknowledge that I have retained Sean Adams only to review and explain the nature of the full Release and Undertaking not to Disclose to me and that I have not sought legal advice from Sean Adams with respect to the amount of compensation I am receiving from the Roman Catholic Episcopal Corporation for the Diocese of Alexandria-Cornwall in Ontario, nor have I disclosed to him the full facts concerning my claim against the said Diocese, and as such I hereby release Sean Adams and his firm for any actions or claims I may have should I determine that the compensation paid to me is insufficient.

Dated at Cornwall, Ontario, this 2nd day of September, 1993.

David Silmsr

Mr. Adams testified that he reviewed the settlement documents with Mr. Silmsers. The amount of the settlement seemed low to the lawyer.

Mr. Adams was told that Mr. Silmsers was also required to sign the following document, addressed to Staff Sergeant Luc Brunet and Constable Heidi Sebalj of the Cornwall Police Service, before the settlement money would be released. Mr. Adams testified that it was his belief that Malcolm MacDonald had drafted the following document:

TO: Cornwall City Police
AND TO: Det. Sgt. Luc Brunet
AND TO: Cst. Heidi Sebalj

I, DAVID SILMSERS, hereby states as follows:—

I made a complaint with Cornwall City Police concerning Charles MacDonald. I received a civil settlement to my satisfaction and before accepting it, I received independent legal advice.

*Now, I do not want to proceed further with any criminal charges.
You may take this statement as a direction to you to close your file
and stop further proceedings as far as I am concerned.*

DATED at Cornwall this 2nd day of September, 1993.

David Silmsers
(Emphasis added)

Malcolm MacDonald made it clear that Mr. Silmsers was required to go to the Cornwall police station to advise the police that he did not wish to proceed with the criminal charges.

Sean Adams understood that if Mr. Silmsers signed the documents, he was agreeing not to pursue either a civil or criminal action against Father MacDonald. Mr. Adams claimed that it did not occur to him that the settlement document his client was asked to sign was not, in fact, a legal document. He testified that he had never seen a settlement document that contained a provision requiring the termination of a criminal matter. Thus, Mr. Adams did not advise his client that the release he was asked to sign was illegal.

On September 2, 1993, Malcolm MacDonald wrote this letter to Mr. Adams:

Dear Sir:

Please find enclosed my trust account cheque payable to David Simser [sic] in the amount of \$32,000.00, being the settlement that he signed today in connection with Father Charles MacDonald and Diocese of Alexandria-Cornwall.

This cheque is being given to you and to be held in escrow until we are advised by the City Police that David Simser [sic] has attended at the Police Station and he advised them that he does not want to proceed with any of these charges.

Yours truly,

A.M. MACDONALD

Mr. Adams testified that in retrospect, it would have been “wise” for him to inform Mr. Silmsen that he could not represent him in this file with the Diocese. There were other lawyers in Cornwall who practised in this area of law, who knew more about settlement documents of this nature, and who had not previously acted for priests in the Diocese of Alexandria-Cornwall. Mr. Adams reiterated that he was simply trying to help Mr. Silmsen obtain his money so that he could begin the healing process. Moreover, Mr. Adams stated that, in hindsight, a warning light should probably have gone off regarding the provision that required Mr. Silmsen to terminate his involvement in the criminal action: childhood sexual abuse by a priest, a person in a position of trust and authority.

Instructions to Bursar of Diocese to Issue a Cheque in the Amount of \$27,000

On September 2, 1993, Mr. Leduc instructed the bursar for the Diocese, the Reverend Gordon Bryan, to write a cheque in the amount of \$27,000, payable to his firm in trust. When the Reverend asked the purpose of the cheque, Mr. Leduc responded that it was for a claim brought against Father Charles MacDonald. The bursar then asked about the nature of the claim, to which Mr. Leduc replied, “You really don’t want to know.” Gordon Bryan considered the lawyer’s response unusual as the bursar was accustomed to being briefed about financial matters involving the Diocese. It was evident to the Reverend that this matter

was confidential. He understood that this cheque was for the settlement of a claim against the Diocese.

It was Gordon Bryan's practice to seek Bishop LaRocque's authorization for cheques issued by the Diocese in such amounts. He met with Bishop LaRocque to discuss this matter. When the bursar asked Bishop LaRocque if he approved the \$27,000 payment, the Bishop replied, "Reluctantly, yes." The Bishop did not provide further details.

The Reverend Bryan issued the cheque to Mr. Leduc on September 2, 1993, in the amount of \$27,000. The payee on the cheque was Jacques Leduc's law firm, Leduc, Lafrance-Cardinal.

On September 2, 1993, Mr. Leduc received a cheque from the bursar in the amount of \$27,000. He deposited this cheque from the Diocese into his trust account and then issued a cheque in that amount to Malcolm MacDonald in trust. Mr. Leduc testified that he assumed from his discussions with Malcolm MacDonald that Father Charles MacDonald would contribute \$5,000.

Mr. Silmsier received a cheque on Malcolm MacDonald's trust account for the total amount of the civil settlement, \$32,000. It was not apparent from the face of the cheque that \$27,000 had been paid by the Diocese.

After Mr. Silmsier signed the release and undertaking and was given the cheque, Malcolm MacDonald brought the executed documents to Mr. Leduc's office in a brown envelope. Mr. Leduc testified that he did not read the executed documents. When asked at the hearings why he failed to review the documents, his response was, "There is no excuse professionally that I can give for that."

Mr. Leduc asked Gordon Bryan to pick up the release and undertaking and place the documents in a confidential file. As I discussed in Chapter 7 of this Report, Malcolm MacDonald was subsequently charged by the Ontario Provincial Police with attempt to obstruct justice regarding the release signed by Mr. Silmsier. Mr. MacDonald pleaded guilty and on September 12, 1995, he received an absolute discharge from the Ontario Court of Justice Provincial Division. This is further discussed in the Chapter 11, on the institutional response of the Ministry of the Attorney General.

On September 2, 1993, the day he signed the release, David Silmsier wrote a note to the Cornwall Police Service to the effect that he had received a civil settlement to his satisfaction and did not wish to proceed further with any criminal charges against Father MacDonald. This is discussed in Chapter 6, on the institutional response of the Cornwall Police Service.

About one week after receiving the cheque from the Reverend Bryan, Mr. Leduc gave him a brown envelope that contained the settlement documents. On the envelope was a label addressed to Jacques Leduc of Leduc, Lafrance-Cardinal, 340 Second Street East, Cornwall, with the notation "Personal & Confidential" and Malcolm MacDonald's return address in the corner of the

envelope. Mr. Leduc explained to Gordon Bryan that this was a full release, and the bursar assumed that the money had been received. Mr. Leduc instructed him to seal the document well and to inscribe on the envelope “Private & Confidential—To Be Opened by Bishop Only.” The Reverend Bryan placed tape on the sealed envelope and filed it in the office. He testified that he did not notify Bishop LaRocque that he had received the settlement documents. He states that in retrospect, he ought to have given these highly confidential settlement documents to the Bishop to review.

Cornwall Police Meet With Bishop LaRocque

Five or six weeks after Bishop LaRocque agreed to the civil settlement with David Silmsen, Cornwall Chief of Police Shaver and Staff Sergeant Brunet met with the Bishop. As I discuss in Chapter 6, Chief Shaver and Staff Sergeant Brunet had met on October 7, 1993, with the Papal Nuncio in Ottawa, who had suggested that the CPS arrange a meeting with Bishop LaRocque. This was the first time the Bishop had been contacted by the CPS since David Silmsen had made his complaint to the police in December 1992. The Bishop had been told by Monsignor McDougald that Mr. Silmsen had contacted the police and had alleged that he had been sexually abused by Father MacDonald in his youth.

Bishop LaRocque met with the Cornwall police officers in his office. He told Chief Shaver and Staff Sergeant Brunet that he had authorized a payment of \$32,000 to David Silmsen and that the settlement had been negotiated with Malcolm MacDonald and Jacques Leduc. The settlement documents were not reviewed at the meeting. Chief Shaver expressed his discontent that the Church had failed to contact the police. As Chief Shaver testified, “I also expressed my displeasure that the Church had not contacted the police during their negotiations and that surely the Church was interested in justice and not the possibility of hampering a police investigation.” The Bishop replied that Father Charles MacDonald had denied the allegations of sexual abuse and that he believed the priest had not committed these acts. Chief Shaver told Bishop LaRocque that David Silmsen was not the only person who had alleged abuse by the priest. He informed the Bishop that two other people had claimed that Father MacDonald had engaged in sexually inappropriate behaviour with them.

Bishop LaRocque became visibly upset when he learned that there were additional victims who had alleged they had been sexually abused. This changed his view about the seriousness of the situation. Mr. Silmsen’s complaint had become more credible to the Bishop, as others were making similar allegations against the priest. In his testimony, Bishop LaRocque did not deny that he may have told Chief Shaver at the meeting that he had made a large mistake in the payment of the money.

Bishop LaRocque testified that he met with Father Charles MacDonald that evening. The priest denied that he had sexually assaulted Mr. Silmsen or other people. He stated that if he had sexual relations, it was always on a consensual basis. Father MacDonald then conceded that he had had sexual relations with more than one person.

Bishop LaRocque called Chief Shaver that night. He relayed his discussion with Father MacDonald to the police chief. According to Chief Shaver, the Bishop said the priest had admitted the assault, and then abruptly said that it was not an assault but rather an isolated homosexual relationship. This is discussed in further detail in Chapter 6. It is noteworthy that the Bishop's account of his conversation with Father MacDonald differed when he spoke to the CAS executive director on October 12, 1993, and to the OPP when he was interviewed in 1994.

Bishop LaRocque was very upset. Father MacDonald was asked to leave the parish and was sent to Southdown two days later for an assessment. Approximately ten months after David Silmsen had disclosed to the Church that Father Charles MacDonald had sexually abused him, the priest was finally removed from his ministry.

Monsignor McDougald had known about previous complaints of sexually inappropriate behaviour by Father MacDonald before the Silmsen disclosure. He knew in late 1991 or early 1992 that the priest had gone on a holiday with a twenty-eight-year-old man and had made sexual advances.

The Children's Aid Society Arranges to Meet the Bishop

A few days after Bishop LaRocque met with the Chief of Police and Staff Sergeant Brunet, he was contacted by the Children's Aid Society (CAS). On October 12, 1993, the Bishop met at his office with CAS Executive Director Richard Abell, Bill Carriere, and Angelo Towndale. Bishop LaRocque had been told by Chief Shaver that the CAS was aware of the Silmsen allegations of sexual abuse and that the agency was initiating an investigation.

Mr. Abell explained to the Bishop that the CAS was concerned about abuse of children and that the agency intended to investigate the Silmsen matter. The CAS wished to interview the altar boys and parishioners in Father MacDonald's parish. It wanted to ensure that Father MacDonald was "out of the parish" during its investigation. Bishop LaRocque was surprised by this request. He told the CAS officials that he wanted to monitor the investigation. He was worried about the publicity associated with the CAS investigation and "the harm that would be done to the faith of the people." Although the 1992 *From Pain to Hope* report had stressed the principles of transparency and openness, Bishop LaRocque was clearly resistant to the CAS investigation and worried about the effects of it on parishioners and on the Diocese as a whole. Mr. Abell's notes state, "We say we

want him out of the parish—to allow us to investigate—Bishop very reluctant—finally agrees to two weeks.” As Bishop LaRocque tried to explain at the hearings, “[A]t that time it was still a very confusing type of situation.”

Father MacDonald was at Southdown undergoing an assessment. Mr. Abell told the Bishop that it was his understanding that David Silmsner had contacted the Ottawa Diocese and that the clergy who spoke to Mr. Silmsner at that time had found him credible. When the CAS officials asked for a copy of the letter from Monsignor Schonenbach, Bishop LaRocque refused, claiming the correspondence was “confidential.” At the Inquiry, the Bishop could not give a reasonable explanation for his reluctance, but stated that if this request were made now, he would be much more forthcoming with documents and would provide a copy of such a letter to the CAS for its sexual abuse investigation.

Bishop LaRocque told the CAS officials that “he didn’t want to pay off Silmsner” but had been “advised to do so by Jacques Leduc,” the Diocese lawyer. According to Mr. Abell’s notes of the meeting, the Bishop said that Father MacDonald was “strongly denying Silmsner allegation” but “admitting to being a homosexual.” The Bishop stressed that such acts had not occurred for the past four years and the priest had had relations “only with teens/adults.” Bishop LaRocque considered sexual acts between a priest and a teenager a breach of celibacy and violations of trust and authority.

The CAS agreed to start its investigation at St. Andrew’s Parish, where Father MacDonald had served for the past several years. Officials from the agency intended to interview current altar boys as well as others who had recently served as altar boys. The CAS representatives told the Bishop that they would be discussing the case with the OPP, which would decide whether to initiate a criminal investigation. Mr. Abell’s notes of the October 12, 1993, meeting conclude with “ended positive note. Bishop looked worried.” Bishop LaRocque confirmed in his testimony that he was anxious about the outcome of the investigations “where the scandal and what the effect on the parish is and on the whole Diocese.”

The notes of Richard Abell the following day record a call he had with Jacques Leduc. Inscribed is, “Says he will talk to Greg rather than Fth McDougal [sic] ... can’t betray priestly confidences (?)” Bishop LaRocque maintained that he never instructed Mr. Leduc or Monsignor McDougald to refrain from speaking to the CAS because of priestly confidences. The Bishop stated that only comments made in the confessional would not be disclosed.

At the end of October 1993, Jacques Leduc told the executive director of the CAS that Father MacDonald would not be returning to his parish, as the priest would be undergoing six months of treatment at Southdown. Mr. Abell told the Diocese lawyer that David Silmsner had refused to discuss the matter with the CAS, as he was concerned he would forfeit the money from the civil settlement. Jacques Leduc undertook to assure Mr. Silmsner that he could speak to the CAS “without penalty.”

A detailed discussion of the CAS investigation of the Silmser allegations is in Chapter 9, on the institutional response of the Children's Aid Society.

On October 30, 1993, at Bishop LaRocque's request, Father MacDonald sent a letter of resignation from his parish to the Bishop. The Bishop wanted to appoint a new pastor to St. Andrew's Parish, and for that to occur, it was necessary for Father MacDonald to resign the position. According to the Bishop, the letter was strangely worded and did not mention either the allegations by David Silmser or the fact that the priest was undergoing treatment at Southdown. The letter said:

The Most Reverend Eugene P. LaRocque, D.D., Bishop of the Diocese of Alexandria-Cornwall has announced the resignation of Rev. Charles F. MacDonald as pastor of Saint Andrew's Parish effective immediately. Father MacDonald has asked for time for rest and personal renewal before accepting re-assignment.

Approximately eleven months after Mr. Silmser had disclosed to the Church that he had been sexually molested by the priest, the Bishop decided it was time to ask Father Charles MacDonald to resign from his position as pastor at St. Andrew's Church.

The response by the Bishop to Father Charles' letter the following day said:

Dear Father Charles:

I wish to thank you for the work that you have done at St. Andrews and for your resignation as Pastor of this Parish in order to find time for rest and personal renewal before you accept a new assignment.

I hope that your stay at Southdown may be profitable to you personally and to your future ministry.

Be assured of my prayers on your behalf, especially as I visit the tomb of the Apostles, Peter and Paul.

Fraternally yours in Christ,

+ Eugene P. LaRocque,
Bishop of Alexandria-Cornwall

Denis Vaillancourt,
Chancellor

Father MacDonald continued to be paid as a full-time priest.

The Diocese Issues a Press Release

On January 6, 1994, a newspaper article entitled “Reports of Sex-Abuse Complaint Involving Church, Police Surface” appeared in the *Standard-Freeholder*. It stated that a male, who alleged he had been abused twenty years earlier by a priest when he was a boy, may have been paid \$30,000 in 1993 “to drop his criminal complaint.” An excerpt of the newspaper article follows:

The male victim of a sexual abuse about 20 years ago may have been paid more than \$30,000 in 1993 to drop his criminal complaint against a local priest.

Allegations that both Alexandria-Cornwall Diocese Bishop Eugene LaRocque and city police had some involvement in a settlement have been circulating for weeks.

The reports surfaced Wednesday in an Ottawa television news program.

...

The source said that during the investigation, the victim told police he was negotiating with the church for compensation and that he might want to drop the case. The source said police were not happy with those developments, but that without a complaint they had no choice but to drop the case.

Bishop LaRocque decided to issue a media release the following day. In the January 7, 1994, press release, the Bishop stated that the Diocese had acted in accordance with the “Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants,” which he attached. But, as mentioned, these guidelines were not strictly followed by the Diocese in the Silmser case. For example, the written report required by Phase 1 of the protocol on receipt of the complaint was not prepared. Also, the notification procedures to the CAS delineated in Phase 5 were not followed. Bishop LaRocque acknowledged at the hearings that unbeknownst to him, at the time he issued the press release in January 1994, the guidelines had not been strictly adhered to in the Silmser allegations of sexual abuse by Father MacDonald. The guidelines, he said, were “followed to some extent.”

The January 7, 1994, press release discusses the principles of compassion and healing for victims of abuse. It also discusses the need for the perpetrator to admit the truth and, if need be, “seek pardon and conversion.” The Diocese in the media release urged victims to disclose clergy sexual abuse and stated that it

was prepared to cooperate with the police and other agencies, and as well to be involved in the healing process:

January 7th, 1994

MEDIA RELEASE

In view of recent media allegations of sexual aggression on the part of a member of the Clergy of the Diocese of Alexandria-Cornwall let it be known that the Diocese had acted in accordance with the Guidelines accepted and promulgated for the immediate and serious attention demanded by such a complaint. (copy enclosed).

The Guidelines are a practical plan of action “for the maximum reconciliation of the following three principles:

- justice towards all who are implicated
- diligence
- respect for civil authorities and their proper jurisdiction in these matters.” (**From Pain to Hope**, Report from the Ad Hoc Committee on Child Sexual Abuse, CCCB, p. 43).

Two attitudes are essential for a truly Christian response to such a grave situation: 1) **compassion** toward the victim(s) of abuse who have suffered a grave injustice and are in need of healing, as well as to the accused who is in need of admitting the truth and, if need be, seek pardon and conversion. The Church, all believers, must manifest this compassion of Christ;

2) **responsibility** in seeking the truth of a difficult situation, while firmly maintaining the important social principle that a person is innocent until proven guilty; also in searching for appropriate remedies, forms of response and eventually, reconciliation. (cf. **From Pain to Hope**, CCCB. p. 43).

We are all agreed that a morally evil act is an offense against God and His plan for our happiness and also “a violation of man’s humanity, in the one perpetrating it even before the one enduring it.” (**Splendour of Truth**, Pope John Paul II, no. 92)

If there are victims of sexual abuse by clergy, we want to know about it. We are prepared to cooperate with the police and/or other agencies and also in the healing process, as we have done in the past.

+ Eugene P. LaRocque,
Bishop of Alexandria-Cornwall

Bishop LaRocque stated that if he were drafting the press release today, he would probably include a contact person for victims of abuse to call, and perhaps additional information on support and counselling available. This would encourage victims to seek the therapy needed for the abuse.

On January 13, 1994, an article entitled "Church Paid to Silence Alleged Victim of Abuse Despite Its Policy on Openness" was published in the *Ottawa Citizen*. It contrasted the principle of transparency advocated in the 1992 Canadian Conference of Catholic Bishops report *From Pain to Hope*, with the \$32,000 Silmsen settlement offered by the Diocese of Alexandria-Cornwall:

The Roman Catholic Diocese of Alexandria-Cornwall paid a man \$32,000 after he promised to remain silent about his claim a Cornwall priest molested him as a child, despite the church's national policy for openness on sexual abuse.

In June 1992, the Canadian Conference of Catholic Bishops formed an ad hoc committee to determine the church's policy in handling cases of child sexual abuse by members of the clergy.

An excerpt from that report, entitled *From Pain to Hope*, reads:

"Another contributing factor to child sexual abuse is a Church that too readily shelters its ministers from having to account for their conduct; that is often tempted to settle moral problems behind a veil of secrecy which only encourages their growth."

However, a 35-year-old former altar boy says the Cornwall diocese offered him money in exchange for his secrecy. The man, who now lives outside Ottawa, says a parish priest in Cornwall sexually abused him from the time he was nine until he was 12.

The following day, Bishop LaRocque held a press conference. Jacques Leduc, the Diocese lawyer, was present. At the press conference, the Bishop maintained

that he had “reluctantly” agreed to a settlement of a civil dispute in which both the Diocese and the priest in question had contributed funds. He acknowledged that this was “not the prudent way” to handle this situation and that he “should have maintained [his] original position” and not agreed to the civil settlement. He asserted that “in no way did I or would I wish to impede the police investigation.” Bishop LaRocque had not yet seen the settlement documents and claimed that he was unaware of the offending clause that prohibited David Silmsen from involvement in the criminal investigation of Father MacDonald. Bishop LaRocque stated that there was “zero tolerance” in the Roman Catholic Church for sexual abuse by priests, and he encouraged victims to come forward. The January 14, 1994, press release further stated:

The Diocese by this decision settles a civil dispute and does not as has been implied, pay the complainant to withdraw criminal complaints.

There was no interference with the criminal justice system in that the investigating officers and the Crown Attorney were advised of the proposed settlement and of the settlement and no criminal charges have been laid.

As had been stated, a settlement was made but the Diocesan authorities have cooperated fully with City Police and with other agencies in their ongoing investigations.

After issuing the January 14, 1994, statement, Bishop LaRocque had an opportunity to read the settlement documents. At this time, the Bishop realized that the information he had conveyed to the public was inaccurate. He testified that he was shocked to see the clause prohibiting Mr. Silmsen from continuing his involvement in the criminal process:

... I’m not a lawyer but as soon as I saw it that second paragraph jumped out in my eyes.

...

... [W]hen I saw it; dropped all criminal proceedings, I mean it just—I couldn’t believe my eyes because it was exactly what I warned them that I didn’t want in the document at all.

This clause, he said, was contrary to the instructions he gave to the Diocese lawyer, Jacques Leduc and to Father MacDonald’s lawyer, Malcolm MacDonald,

in the September 1993 meeting at which he agreed to enter a civil settlement with Mr. Silmsr.

Jacques Leduc, the Diocese lawyer, claimed that he had still not read the settlement documents delivered to him in early September 1993 at the time of the January 14, 1994, press release. He testified that he trusted Malcolm MacDonald, Father MacDonald's lawyer, that he did not read the final documents, and that he had simply transported them to the Diocese, to the Reverend Gordon Bryan. He claimed that it was not until January 19, 1994, when Mr. Silmsr's lawyer notified him by letter, that Mr. Leduc became aware that the release contained the offending clause. Mr. Leduc contacted Gordon Bryan and asked him to fax a copy of the settlement documents. Mr. Leduc informed the Bishop of the contents of the clause on the same day.

Mr. Leduc acknowledged at the hearings that he had never previously been involved, to his recollection, in a case in which he had not read the final documents on behalf of his client. Mr. Leduc stated that his trust in Malcolm MacDonald was misplaced and that he had relied on Mr. MacDonald's representation, with the consequence that this was "very embarrassing" both to him and to the Bishop. It damaged his reputation. Mr. Leduc said that the consequences of his reliance on Father Charles MacDonald's lawyer were "disastrous."

Bishop LaRocque issued another press statement on January 23, 1994, in which he acknowledged that the settlement entered into by the Diocese with David Silmsr had interfered with the criminal investigation by the Cornwall Police Service. This was a great embarrassment to the Bishop and to the Diocese. In this statement, the Bishop maintained that he learned this only after the January 14 press release. He apologized for "unwittingly misrepresenting this fact" and stated that this offending provision in the settlement document was "morally unjust." The Bishop said that he had retained new legal counsel for the Diocese, whom he had instructed to make clear to the alleged victim that the Diocese had no intention of interfering with the criminal process:

At the Press Conference of Friday, January 14th, 1994, I stated that the joint "understanding" of settlement out of court was to settle a civil dispute and did not interfere with the criminal investigation. I made this statement in accord with the instructions received from our Diocesan Counsel.

However, I have since learned that the signed release does in fact rule out both civil and criminal action (article 2). This is morally unjust and does not reflect the basis on which the Diocese cooperated with this action.

I have instructed our newly engaged Diocesan legal Counsel to advise the alleged victim that the Diocese does not wish to interfere with his right to proceed criminally and we consider him free to do so in order that we may know the truth of the present situation.

If there are other possible victims in this case, I urge them to contact Msgr. D.B. McDougald, my delegate and/or the Cornwall Police.

I am sorry for unwittingly misrepresenting this fact in the Press Conference and I again assure you of my desire to bring about a Christian reconciliation of the accused priest and the alleged victim based on the truth.

+ Eugene P. LaRocque,
Bishop of Alexandria-Cornwall

Similarly, on January 24, 1994, Jacques Leduc issued the following press release:

On January 14th, at a press conference, I made repeated representations to members of the press that the settlement with the complainant in question did not include as a condition that he withdrawn his criminal complaint. I stressed on a number of occasions that it was never the intention of the Bishop or myself to interfere with the criminal justice system.

However, on Wednesday of last week, January 19th, I received a letter from the solicitor for the complainant indicating that the document containing a release made specific reference to the plaintiff undertaking "not to take any legal proceedings, civil or criminal, against any of the parties hereto and will immediately terminate any actions that may now be in process."

I was, needless to say, disappointed to discover that the mention of criminal proceedings had been included in the settlement document. The document was prepared by other parties and I did not review it before it was signed. In addition once the document was signed and the document was delivered to my office in a sealed envelope and I delivered it to the Diocesan authorities without reading it at the time.

As you can imagine I feel very foolish this morning and embarrassed for having made representations to the press and the general public

without having reviewed the document in question. I certainly assume responsibility for any confusion or misrepresentations arrived at as a result of my omission.

I can assure you that I regret this error and that I deeply regret having caused embarrassment to our Bishop and to other Diocesan authorities.

In conclusion I would like to say that it has been and is my position that this settlement in question was a settlement of a purely civil matter and had I exercised prudence the settlement would not have made any reference to criminal action.

Thank you for your attention.

The Bishop understood that the clause in the settlement document was not only “morally unjust”—it was illegal. The Bishop ended the Diocese’s retainer on this matter with Jacques Leduc and hired David Scott of Scott and Aylen.

Assessment and Treatment for Father MacDonald at the Southdown Facility

Father Charles MacDonald was sent to Southdown by Bishop LaRocque for an assessment in October 1993. On October 22, 1993, the Bishop received a report from the facility, recommending treatment at its residential program. The report stated that Father MacDonald had admitted he had a “homosexual orientation” but denied that he had engaged in sexual activity with minors. Father MacDonald had told the Southdown professionals that his sexual partners had been in their early twenties to mid-thirties. According to the Southdown report, “Charles had crossed professional boundaries” and has been “involved with parishioners.”

Bishop LaRocque received a follow-up report of Father MacDonald’s treatment on December 20, 1993. The priest continued to deny the allegations made against him and maintained that he had never sexually abused any person. He was very upset about the police and CAS investigations. Father MacDonald also claimed that he had had no sexual relations for the past eight years:

... Charles spoke with conviction about the falsity of the charges against him and the injustice of the current police and Children’s Aid Society’s investigation. He maintains his innocence and has assured [sic] me that no further charges are possible because there was never any abuse in the first place.

The therapist wrote “Charles does not appear to be as confident in accepting his homosexual orientation and this should be an area for in-depth therapy.” Some of the goals for his therapy at Southdown included the following:

- to become better able to integrate the emotional aspects of his sexual orientation
- to deal with anger regarding the accusations placed against him; and
- to deal with issues relating to authority.

Bishop LaRocque replied to the January 19, 1994, letter. In correspondence to Sister Donna Markham, the executive director at Southdown, the Bishop disclosed that two other people had claimed that Father MacDonald had sexually assaulted or made sexual advances toward them. One had been an altar boy at the time and the other a young man.

Approximately a week earlier, Bishop LaRocque had received a letter from a former altar boy at St. Columban’s Parish, C-3, who wrote: “Fr. Charles was always trying to grab at my groin when no one was around.” He told the Bishop that as a result of this sexual behaviour, he had “lost all faith in the Catholic Church.” His letter concludes with these words:

I don’t know how many other people were subject to what David and I went through but I can only hope there were not any others.

The Bishop sent this letter to Southdown and to the Diocese lawyer. He did not send the letter or convey the information to the Children’s Aid Society. The Bishop concludes his January 19, 1994, letter with the following words:

I share this with you in the hope that I may help Father’s treatment and lead him to seek pardon from those he has scandalized and offended. Only then can we contemplate the healing that true reconciliation can bring.

In March 1994, Bishop LaRocque received correspondence from Southdown recommending that discussions soon begin regarding Charles MacDonald’s return to the Ministry:

Sometime, during the upcoming month of April, it would be helpful for Charles and myself to discuss with you the prospects for his return to ministry in the Diocese.

Father MacDonald's six-month treatment program ended in May 1994. The therapist stated that she was amenable to discussing Father MacDonald's progress with the Children's Aid Society:

If the Childrens' [sic] Aid Society would like a description of the Southdown Program, and Charles' progress in it, I would be happy to provide it. Charles has shared with me their offer of therapy. It is important that they understand Charles is in therapy here.

Father MacDonald was not permitted to return to ministry by the Bishop. Bishop LaRocque was not satisfied with the treatment received by Father MacDonald at Southdown. In a letter to the executive director in March 1995, the Bishop writes:

I must also, in all frankness, tell you that I am not satisfied with your dealings with Father Charles MacDonald. The fact that you did not give him the tests for pedophilia, the fact that the Children's Aid, after their examination, feel that there is reasonable and probable grounds to believe that the abuse did occur, leaves me, to say the least, perplexed.

After the investment of so much time and money, I would hope that, if Father Charles is blocking this out of his memory, there should be some way in which he could be helped to face the truth.

In the following year, the Bishop learned that another former altar boy at St. Columban's Parish, John MacDonald, alleged that he, too, had been sexually abused by Father Charles MacDonald. John MacDonald disclosed the abuse in a letter to Father Kevin Maloney in August 1995. In the conclusion to his letter, John MacDonald writes:

Please don't make me push this any further than between us. I do not want to go through what Dave is. Father Charlie knows what has taken place, and it is time that healing begins for all involved.

C-4 was another former altar boy who alleged that he was also sexually abused by Father MacDonald. It was evident to the Bishop that many boys and other young men in the Diocese of Alexandria-Cornwall claimed that they, too, had been sexually abused by this priest. The OPP investigation and the prosecution of Father Charles MacDonald are discussed in detail in Chapters 7 and 11 of this Report.

Father Charles MacDonald Not Asked to Resign From Ministry Until 1998

In January 1995, Richard Abell wrote to Bishop LaRocque to inform him that as a result of the investigation, there was reasonable and probable cause to believe that Father MacDonald had abused a child and that he might continue to constitute a risk to both children and young adults. The CAS alerted the Bishop to this information because the agency was concerned with future clerical assignments of Father MacDonald in the Diocese. The January 6, 1995, from Richard Abell stated:

Your Excellency:

Re: Abuse Allegation Against Father Charles MacDonald

Further to our meeting of yesterday, I am writing to confirm the position of our Society with respect to the above-mentioned allegation.

Based on our investigation of the allegations, we have reached the position that there are reasonable and probable grounds to believe that the abuse of a child did occur. Our view is supported by the result of our inquiries into the specific allegation, as well as statements of other individuals who claim victimization by Father MacDonald.

Given this position, and in the absence of a full sexual behaviours assessment of Father MacDonald, it is our view that he may present a risk to children and young adults under his care and control. We are therefore concerned that any further assignment of Father MacDonald in the Diocese be done with this information in mind.

I would like to thank you for your cooperation throughout this very difficult matter. I am extremely pleased that we can now move ahead to establish a collaborative protocol for dealing with abuse allegations against members of the clergy.

Please call if you have any questions regarding the above.

Yours sincerely,

Richard J. Abell
Executive Director
(Emphasis added)

But despite this letter, Father MacDonald remained incardinated in the Diocese. The prospect of initiating canonical proceedings to remove him from priesthood “didn’t enter” the Bishop’s “mind at that time,” but the Bishop commented, “It probably would with the knowledge that I have now and procedures that are taking place at present.”

It was not until the end of January 1998, over five years after the Silmsen complaint, that Bishop LaRocque asked Father MacDonald to retire officially from active ministry. Father MacDonald was sixty-five years old. The January 29, 1998, letter from the Bishop stated:

Dear Fr. Charles,

A belated Happy Birthday—your 65th!

Since it will be impossible, no matter the outcome of the criminal charges against you, to reassign you to active ministry in this Diocese or in any other, I would ask you to retire officially from active ministry. A letter from you to this effect would be greatly appreciated.

As you readjust to a new form of income, I assure you that we shall continue to support you in prayer, in friendship and financially with your court case.

Union de prieres!

+ Eugene P. LaRocque
Bishop of Alexandria-Cornwall

Bishop LaRocque knew that a number of individuals, some of whom did not want to become involved in the criminal process, had disclosed that they had been sexually abused by Father MacDonald. The Diocese continued to fund Father MacDonald’s legal costs, Bishop LaRocque said, in accordance with the 1996 protocol. Bishop LaRocque, as mentioned, never considered initiating a canonical proceeding to laicize Father MacDonald. And it was not until 1998 that the Bishop asked Father MacDonald to retire from active ministry.

Conclusion

As I discuss in Chapters 7 and 11, Father Charles MacDonald was criminally charged by the OPP in 1996 in relation to three complainants: David Silmser, C-3, and John MacDonald. The preliminary inquiry took place in 1997, and Father MacDonald was committed for trial on seven counts. In January 1998, the OPP charged Father MacDonald on a second set of eight charges regarding complainants C-4, C-8, Robert Renshaw, C-5, and Kevin Upper. In 2000, four additional counts were laid against the priest in relation to C-2. Father MacDonald was not convicted of any of these criminal charges.

These criminal charges against Father MacDonald are discussed in further detail in the chapters on the institutional response of the OPP and of the Ministry of the Attorney General.

Bishop LaRocque made this statement at the conclusion of his testimony:

I want to take this final opportunity to apologize to the community of Cornwall, to all the faithful of the Diocese and to all the people in it who were hurt by mistakes I made during my administration. I also want to apologize to anyone who was hurt by the actions of any priest in this Diocese, or by any errors which I or the Diocese may have made in handling any such cases.

I hope, at least, that my coming here to participate in this Inquiry will contribute to the fulfilment of the Commission's mandate and promote healing and reconciliation to all concerned. And I promise to keep all in my prayers and in my daily mass.

It is clear from the evidence that the Diocese of Alexandria-Cornwall and Bishop Eugène LaRocque delayed investigating the allegations of inappropriate contact with young persons by Father Charles MacDonald. They failed to take appropriate action to identify potential victims with respect to the allegations against Father MacDonald. They also failed to take appropriate action to ensure that young persons in the community would not be at risk in relation to Father MacDonald. Moreover, the Diocese and Bishop LaRocque did not advise either police agencies or the Children's Aid Society of the allegations of sexual abuse involving Father MacDonald and young people.

It is my view that the Diocese and Bishop LaRocque did not provide adequate training for diocesan personnel and clergy on the appropriate response to allegations of sexual misconduct by clergy involving young persons. Monsignor McDougald failed to follow the policies and guidelines in place to respond to allegations of misconduct.

Furthermore, it is evident that Jacques Leduc did not act appropriately when representing the Diocese of Alexandria-Cornwall in the settlement between the Diocese, David Silmsen, and Father Charles MacDonald by delegating the handling of the settlement to Malcolm MacDonald, counsel for Father Charles MacDonald, and failing to read the release and undertaking either before or after it was signed by David Silmsen on September 2, 1993. He also failed to follow practices and procedures to ensure that files, notes, and records of allegations of clergy sexual abuse were properly stored and were retrievable.

Father Romeo Major

Father Romeo Major was a priest in the Diocese of Alexandria-Cornwall. He was incardinated in 1964, ten years before Bishop Eugène LaRocque arrived in Cornwall. Father Major remained a priest in the Diocese when Paul-André Durocher became the Bishop in 2002.

Eugène LaRocque testified that when he was the Bishop of the Diocese, he received several complaints over the years about Father Major. He knew that Father Major was difficult to get along with, but maintained that he never received a complaint of sexual abuse regarding this priest.

It was in October 1999 that the Ontario Provincial Police (OPP), as part of the Project Truth investigation, contacted Bishop LaRocque with a request for information. The investigation of Father Major by the OPP is discussed in Chapter 7, on the institutional response of the Ontario Provincial Police. In correspondence on October 28, 1999, Detective Inspector Pat Hall asked the Bishop for a copy of Father Major's curriculum vitae as well as information on his former postings as a priest and the addresses of his residences. The OPP also wanted a photograph of Father Major, preferably taken in the mid-1970s. Detective Inspector Hall told Bishop LaRocque that the OPP would be contacting altar boys and girls in the 1975 to 1979 period, in locations "where Father Major was a priest." The OPP officer asked the Bishop to provide a list of the names of the altar boys and girls as it would assist the police and, moreover, would avoid unnecessary inquiries of people in the community.

Inscribed on this correspondence from the OPP, Bishop LaRocque wrote "no list available." However, the Bishop acknowledged in his evidence that bulletins from St. Martyr's Church, at which Father Major was a pastor, would often list the names of the altar boys and girls who participated in the services at the church. When Commission counsel asked Bishop LaRocque whether he mentioned this to the OPP, the Bishop claimed that he could not remember.

Bishop LaRocque was aware at this time that there was an allegation of abuse by Father Major with a girl. According to the notes of CAS worker Lorne Murphy, Mr. Murphy received a telephone call on November 1, 1999, from Bishop LaRocque, who asked to speak to Richard Abell, the executive director of the Children's Aid Society (CAS) of the United Counties of Stormont, Dundas & Glengarry. Mr. Murphy explained to Bishop LaRocque that Mr. Abell was away from the office. The Bishop told Mr. Murphy that OPP Detective Inspector Hall had spoken to him about an investigation into allegations of sexual touching of a girl committed about twenty-five years earlier by Father Major of St. Martyr's Church. Mr. Murphy stated that he would convey this information to Mr. Abell and to Mr. Bill Carriere.

On April 10, 2000, Father Major wrote to the Bishop to advise him that he had been arrested by the police that morning. The priest was charged with indecent assault of a young girl that allegedly took place between 1974 and 1976. The matter had now become public and Father Major asked the Bishop to relieve him of his duties as pastor of his parish.

The Bishop accepted the resignation of Father Major pursuant to the requirements of the 1996 "Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants." He told Father Major that he hoped the matter would soon be resolved in the courts. In correspondence on April 11, 2000, Bishop LaRocque assured the priest that the Diocese would continue to pay his salary. The Bishop allowed Father Major to continue to live in the rectory without public functions. The Bishop prepared a media statement, which he copied to Huguette Burroughs, the editor of French newspaper *le Journal de Cornwall*. It stated:

Re: Charge of Indecent Assault against Rev. Roméo Major of
Sts Martyrs [sic] Parish.

After consultation with the Personal Committee of the Diocese and with the Director of the Children's Aid, I have accepted Fr. Major's resignation, according to our Protocol, and have named Rev. Réal Lévêque, p.s.s. as administrator. The matter is now before the courts.

+Eugene P. LaRocque
Bishop of Alexandria-Cornwall

EPL/ama

C.C. Huguette Burroughs

According to the notes of Detective Constable Don Genier, a man disclosed to the OPP on April 13, 2000, that his sister had been abused by Father Major when she was a teenager and that she had disclosed this to him ten years earlier, in 1990. This man told the OPP that he had contacted Bishop LaRocque in 1990 to ask if the Church had received complaints of sexual abuse or other complaints about Father Major. The Bishop replied that he did not recall a complaint of sexual abuse against this priest. However, at the hearings Bishop LaRocque maintained that until the OPP investigation and the laying of criminal charges against Father Major in 2000, he could not recall any complaints of sexual assaults by this priest.

Prior to the scheduled preliminary inquiry, the Bishop decided that he would send Father Major to Southdown Institute for an assessment after the preliminary inquiry was completed. It was originally scheduled for November 2000 but did not take place until September 2001. The criminal case concerned an allegation of sexual abuse of a girl between eight and eleven years old. It was a historical sexual abuse case. Father Major denied that he had committed sexual improprieties on this alleged victim.

Father Major told Bishop LaRocque that he had previously been involved in children's groups such as Boy Scouts and Cubs. He explained to the Bishop that children would sit on his lap, which he acknowledged may have been indiscreet. However, as the Bishop said in his evidence, Father Major maintained that he could not recall intentionally "touching anyone in this way."

In a letter sent to Bishop LaRocque in May 2001, Mr. Raymond Dlugos, a psychologist at Southdown Institute, wrote that an objective of Father Major's "treatment is to explore sexuality and address issues related to allegations of sexual misconduct." The psychologist stated that although the priest had denied the allegations, "he acknowledges the possibility that he was not as prudent in maintaining professional boundaries at the time the misconduct is alleged to have occurred." Bishop LaRocque and the Diocese did not take adequate measures to investigate the allegations against Father Major when this information was received.

Criminal Charges Withdrawn Against Father Major Due to Illness of Complainant, Bishop Returns Priest to Ministerial Duties

On October 10, 2001, charges were withdrawn by the Crown as a result of a serious illness suffered by the complainant, a malignant brain tumour. As I discuss in Chapter 7, the disease and treatment of the illness affected the woman's memory. It was for this reason that the Crown contacted the complainant and the OPP to inform them that it had decided to withdraw the charges against

Father Major. At the request of Father Major, Bishop LaRocque wrote a letter to the parishioners of St. Martyr's Church a few days after the withdrawal of the criminal charge. The Bishop said that it was with joy that he was reinstating Father Major in his position as priest of the parish. He told parishioners that after a year and a half, the court had found that there was no legal case against the priest. The October 13, 2001, correspondence says:

C'est avec joie que je remets le P. Roméo Major en fonction comme votre curé. Après un an et demi la cour trouve qu'il n'y a pas de cas juridique.

Bishop LaRocque knew that the criminal charges had been withdrawn as a result of the illness of this woman. He knew that the matter was never adjudicated by the courts. Yet the Bishop told parishioners in Father Major's church that the courts had concluded that there was no legal case. And he told parishioners that it was with joy that he was reinstating Father Major to his ministerial functions at the parish. Despite the fact that criminal charges had been laid against the priest for indecently assaulting a young girl, the Bishop decided that Father Major did not present a risk to other young girls in the community or other young people in his parish. Bishop LaRocque came to this conclusion without an internal investigation by the Diocese of the allegations of abuse against Father Major.

Father Major continued his ministerial functions until his retirement at his parish. The Bishop of the Diocese at the time of his retirement was Bishop Paul-André Durocher, who assumed this position in 2002. Although the new Bishop knew of the circumstances surrounding the withdrawal of the charges against Father Major, he maintained the status quo. He stated that at this time, he was focused on developing a protocol. Bishop Durocher did not review the decision made by Bishop LaRocque allowing Father Major to continue ministering in the Diocese of Alexandria-Cornwall. Bishop Durocher testified, "It was not my intention to review Bishop LaRocque's decisions. Furthermore, nobody ever approached me to review that." In Bishop Durocher's opinion, Bishop LaRocque's decision regarding Father Major had been accepted by the community:

... [W]hen Father Major was exercising ministry, there was not a single person who suggested that he should not be there ... not just parishioners, but any other people; victims' groups; protest groups; nobody suggested that I review that decision so I felt it was a decision that was accepted by the community.

...

... Anybody could have sent me a letter that said, “Bishop, we feel really awkward with the fact that this Priest is exercising ministry and no determination was made; we think you should look into this.”

It was clear that the charges against Father Major were withdrawn for reasons other than the merits of the case. In such circumstances, the employer, in this case the Diocese, should automatically conduct a review of the incident to determine whether the priest constitutes a risk to the people with whom he has contact and whom he serves.

In my view, the Diocese and Bishop LaRocque failed to sufficiently investigate allegations of inappropriate contact of Father Romeo Major with young persons. Moreover, the Diocese, Bishop LaRocque and Bishop Durocher failed to take appropriate action to identify potential victims of Father Major in relation to allegations of inappropriate contact with young persons. It is also clear that Bishops LaRocque and Durocher, as well as the Diocese of Alexandria-Cornwall, did not take appropriate measures to ensure that young persons in the community were not at risk in relation to Father Major.

Bishop LaRocque testified that he did not believe that a policy or process existed in the Diocese to ensure that it monitored the preliminary inquiries or trials of priests who had been criminally charged with sexual crimes. It is my recommendation that the Diocese monitor preliminary inquiries or trials of priest and other clergy charged with sexual offences.

Father Paul Lapierre, Father René Dubé, and Father Don Scott

Allegations Against Father Lapierre and Father Dubé

Father Paul Lapierre was incardinated in the Diocese of Alexandria in 1959. Although he left the Diocese before Eugène LaRocque became the Bishop in 1974, Father Lapierre remained incardinated in the Diocese of Alexandria.

Church officials in the Diocese testified that in the late 1950s or early 1960s, there were rumours circulating about Father Paul Lapierre. Father Réjean Lebrun testified that there were rumours about Father Paul Lapierre’s sexual involvement with a young man in his parish. Similarly, the Reverend Gordon Bryan heard rumours about Father Paul Lapierre in that period as well. He testified that he did not discuss these allegations with Church officials in the Diocese.

Father Lapierre was investigated by the Ontario Provincial Police (OPP) and criminally charged as part of Project Truth. As I discuss in this Report, Claude Marleau was one of the alleged victims interviewed by the OPP who disclosed that a number of priests and other men had abused him, including Fathers

Paul Lapierre, Don Scott, and René Dubé. Mr. Marleau alleged that he was sexually abused by Father Paul Lapierre on a number of occasions. In a statement to the OPP, he said that he was abused by Father Lapierre at a retreat house in Alexandria, in Father Lapierre's car, and at cottages.

On March 17, 1998, Detective Constables Don Genier and Joe Dupuis interviewed Father Lapierre. The investigation and criminal charges against Father Paul Lapierre are discussed in fuller detail in Chapters 7 and 11, on the institutional responses of the Ontario Provincial Police and the Ministry of the Attorney General.

One year later, in March 1999, Detective Sergeant Pat Hall contacted Bishop LaRocque to inform him that Fathers René Dubé and Paul Lapierre were also under criminal investigation by the Montreal police. The Bishop testified that although he was surprised to learn about Father Dubé, he was not shocked to hear this information about Father Lapierre. As he said in his evidence, "I knew from his background that it could be possible."

As mentioned, although Father Lapierre was incardinated in the Diocese of Alexandria, he left in the late 1960s before Eugène LaRocque became the Bishop. From approximately 1968 until the mid-1980s, Father Lapierre was a freelance mission retreat preacher in Canada and the United States according to Bishop LaRocque. He spent most of his winters in Florida. Bishop LaRocque had received information regarding Father Lapierre from Bishop Nevin, who was in the Diocese of Naples in Florida. There was information about Father Paul Lapierre in the media. According to Bishop LaRocque, a newspaper article reported that Father Lapierre had been picked up by a male police officer to whom he had made sexual advances. Bishop LaRocque testified that he could not recall whether he provided this information to the OPP.

Bishop LaRocque recalled that Father René Dubé contacted him as soon as he became aware of the police investigation. Father Dubé, a priest at Ste-Croix Parish in Cornwall was very concerned. People in his parish had learned about the charges against him and were upset. Father Dubé was well known in the community and had been a priest in the Diocese for many years. He was charged for sexually assaulting a teenaged boy in Quebec in 1965, when Father Dubé was in the seminary. Father Paul Lapierre was also charged with gross indecency and indecent assault with regard to this youth. Father Lapierre and Father Dubé were co-accused in the Quebec prosecution. Father Dubé tendered his resignation to the Bishop on June 20, 1999.

Bishop LaRocque contacted Father Lapierre between June 20 and June 23, 1999, to assess whether there was any veracity to the allegations. Father Lapierre told the Bishop that Father Dubé was innocent and had not been involved in the sexual abuse. Father Lapierre informed the Bishop that he and another priest

had participated in this incident. He identified the other priest as Father Don Scott, who had been incardinated in the Diocese before Eugène LaRocque was installed as Bishop.

Bishop LaRocque claimed at the hearings that he was concerned about former parishioners who might have been sexually abused by Father Don Scott. But the Bishop did not take any steps after he received the information from Father Lapierre in June 1999 to identify these individuals. The Bishop did not contact Claude Marleau, a victim of sexual abuse, who was at that time practising law in Quebec City.

Claude Marleau testified at the Inquiry that Roch Landry¹⁷ had introduced him to Father Paul Lapierre, who, he said, became the most important figure in his adolescence: “Paul Lapierre est devenu la figure la plus importante de mon adolescence.” Mr. Marleau stated that he was first abused by Father Lapierre in the priest’s room. He testified that the sexual abuse occurred many times. Claude Marleau also testified that he was brought to Father Don Scott’s residence by Father Lapierre and that the two priests had sexually abused him. He stated that both priests were present at the time of the alleged sexual abuse. Mr. Marleau said that Father Paul Lapierre and Father Scott were good friends. The connection between Mr. Marleau’s alleged perpetrators is further discussed in the chapters on the institutional responses of the Ontario Provincial Police and the Ministry of the Attorney General.

Bishop LaRocque met with both the Parish Council and the Finance Council of the Diocese after he spoke to Father Lapierre. The Bishop told the council members that he was morally certain, from a conversation with a “reliable source,” that Father Dubé was innocent of the charges of sexual assault. He asked the members if he could breach the protocol and allow Father Dubé to continue to exercise his ministry.

On June 26, 1999, the following article appeared in the Cornwall *Standard-Freeholder*. Entitled “Priest Tells Parishioners He’s Innocent: Charged With Sex Crime,” it says the following:

A Cornwall Roman Catholic priest charged with a sex crime said he’s innocent and that the truth will set him free.

Rev. René Dubé, 54, pastor of Sainte-Croix parish on Anthony Street in east-end Cornwall, announced to his shocked parishioners at mass last weekend he had been charged in connection with an alleged assault against a 14-year old boy in 1967.

17. Roch Landry was one of Claude Marleau’s alleged abusers.

“I hope that the truth will make me free, because I’m innocent,” he said Friday.

Dubé is alleged to have sexually assaulted the teen when he was a 23-year-old seminarian in Montreal. Dubé said he doesn’t know the complainant and is completely mystified by the charge.

Dubé said he first heard of the charge when he opened his mail recently to find a court summons from the Montreal courthouse. He also said he’s never been interviewed by a police officer.

He’s receiving strong support from Bishop Eugene LaRocque who refused to accept Dubé’s resignation.

“This is a case of mistaken identity,” said LaRocque Friday. “I’m not going to add a second injustice,” by having Dubé removed from the parish.

The church established a protocol for priests who are charged with crimes. But LaRocque said he’s not “shackled” by the protocol.

“I am not shackled to a protocol especially when my conscience comes into play,” said LaRocque.

The bishop said he’s not concerned about the public’s perception, especially in light of a police probe into allegations that priests and other prominent people sexually abused children in the Cornwall area dating back over the last 40 years. Instead, LaRocque said he was “concerned about what God sees.”

Dubé makes his first court appearance June 29 in Montreal.

As I discuss in Chapters 7 and 11, Father Lapierre was convicted of abusing Claude Marleau in Montreal but was acquitted in the Cornwall trial, at which Mr. Marleau was also one of the alleged victims. Bishop LaRocque testified at the Inquiry that he did not know that Father Paul Lapierre had appeared before the Ontario courts on charges of sexual abuse involving Claude Marleau. But he acknowledged that an article was published in the *Ottawa Citizen* at that time regarding the Lapierre trial in Cornwall and that this matter had been brought to his attention.

Bishop LaRocque did not contact either the police or the Crown's office to provide the information that had been imparted to him by Father Lapierre that he and Father Don Scott, priests in the Bishop's Diocese, had been involved in a sexual incident. The Bishop agreed at the hearings that "in hindsight, I should have let people know ... I didn't think of it." In retrospect, he acknowledged that this information might have been of assistance to Mr. Marleau and to the police and prosecutors dealing with these sexual abuse cases.

In approximately late June or July 1999, Huguette Burroughs, the editor of *le Journal de Cornwall*, a French newspaper, wrote an article on the issues involving Father René Dubé, which she provided to Bishop LaRocque. Ms Burroughs was a parishioner at Nativité Cocathédral. She wanted to consult the Bishop before publishing the article in the newspaper. The article discussed the injustice to Father Dubé and other priests in the Diocese who had been subjected to allegations of indecent acts. Ms Burroughs was critical of people who complained to authorities many years after the alleged event. She stated that these alleged victims should not be permitted to pursue their complaints years after the alleged acts and suggested that a limitation period should exist for such accusations. Ms Burroughs said that allegations such as those against Father Dubé were unacceptable and that such complaints against priests were orchestrated to financially ruin the Church as an institution. The article stated that people should not wait thirty-two years to allege abuse against clergy in the Church. It suggested that those alleging abuse were interested in money and that their psychologists were trying to get these alleged victims to retrieve old memories.

Bishop LaRocque testified that he was in agreement with the contents of the article when it was written by Huguette Burroughs in 1999. Yet at this time, the Bishop knew about the sexual abuse perpetrated by Father Stone, Father Deslauriers, Father Lapierre, and Father Scott. Bishop LaRocque agreed in his testimony that in retrospect, he should have conveyed the message that some priests in the Diocese were "problems."

Bishop LaRocque was aware from his discussion with Father Lapierre that both Father Don Scott and Father Paul Lapierre had been involved in the sexual abuse of a boy several years earlier. However, the Bishop told Ms Burroughs that he endorsed the contents of the article she had authored. Father Lapierre had admitted to the Bishop that he had sexually abused this boy and had identified the other priest who had also perpetrated these acts. Yet the Bishop did not raise any objections to the contents of the article.

In his testimony, Bishop LaRocque gave two reasons why he did not report to the police the information relayed to him by Father Lapierre: (1) Father Scott was dead; and (2) the police were already investigating the sexual assault allegation against Father Lapierre. I do not find these reasons convincing. Father Lapierre

had admitted to Bishop LaRocque that he had sexually abused a boy. Moreover, another bishop in the United States had discussed his concerns about Father Lapierre's inappropriate behaviour, and Bishop LaRocque knew there were allegations that the priest had propositioned an undercover officer. Bishop LaRocque agreed that he could have been more forthcoming and communicated this information about priests such as Father Lapierre and Father Scott to the police. He further acknowledged that the institutional response of the Diocese of Alexandria-Cornwall when he was the Bishop could have been better.

After the trials against Father Lapierre had concluded and he was convicted in Montreal, Bishop LaRocque did not contact Claude Marleau.

As mentioned, Father René Dubé sent a letter of resignation to Bishop LaRocque on June 20, 1999. Bishop LaRocque indicated on June 23, 1999, that he was not required to accept the priest's resignation and that he was morally certain that Father Dubé was innocent. The Bishop took the position that he was not breaching the diocesan protocol. In his testimony, Bishop LaRocque said that he had been advised by Father Denis Vaillancourt that he was not violating the protocol by refusing to accept Father Dubé's resignation.

The 1996 "Diocesan Guidelines of Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants" stated:

... If the situation warrants it (because there is a risk to the alleged aggressor, or *the possibility of a risk to other members of the community, because the events have become public, because charges will be laid, because a trial will take place*) the Bishop removes the suspected aggressor from Church duties.

Protocol for priests who are the subject matter of criminal proceeding
or civil litigations

...

3. Should there be an allegation of an indictable offense, with one or more of the following conditions present:

- a) risk to the alleged aggressor;
- b) possibility of risk to members of the community;
- c) because the events have become public;
- d) because charges will be laid;
- e) because a trial will take place;

the accused priest will be removed from his position and placed on a leave of absence. After six month [sic], the removal becomes permanent. (Emphasis added)

Charges had been laid and the matter was public. The conditions were present. Yet Bishop LaRocque took the position that he was not contravening the protocol by refusing to remove the priest from Church duties. Bishop LaRocque maintained that he was morally certain Father Dubé was innocent because of his telephone conversation with Father Lapierre.

Bishop LaRocque explained that he did not follow the diocesan guidelines with respect to Father Dubé because he did not want the priest to be doubly punished by the criminal system and by the Diocese. I do not find this a persuasive reason. The Bishop relied upon the conversation he had with Father Lapierre. The Bishop did not undertake any investigation or conduct other interviews to inform himself of the credibility of the allegations made against Father Dubé.

A few days after the article was published in the *Cornwall Standard-Freeholder*, Richard Abell, executive director of the Children's Aid Society (CAS), wrote a letter to the Bishop urging him to accept Father Dubé's resignation and to have him refrain from parish duties until the resolution of the court proceedings. Mr. Abell was clearly concerned about the protection of children and youths in the community. The June 30, 1999, letter stated:

Dear Bishop LaRocque:

Re: Father Rene Dube

I have been hoping to speak to you regarding the recent developments in this matter that were reported in last Saturday's *Standard Freeholder*. In case we are not able to connect by phone in the near future, I'm writing you with some thoughts.

I fully understand your wish to support your priest. However, I also come to this issue with the perspective of public safety. Criminal charges of sexual misconduct against a youth are in themselves very serious, and warrant a careful attention to the safety and protection of children, whatever personal positions may be held about the allegations.

On that basis I urge you to accept Father Dube's offer to step down from his parish duties until such time as a court has given it's [sic] judgment on the allegations against him. A reading of your protocol informs me you have discretion in these circumstances, although four of the five situations cited which would support the decision to suspend ("... a risk to other members of the community ...," etc.) are relevant to the present situation.

In the event you should decide to maintain Father Dube in his present assignment, I ask that you put in place measures to ensure that there can be no risk to children or youth while you await the outcome of the charges.

Please call if you would like to discuss any of the above.

Yours truly,

Richard Abell
Executive Director

Bishop LaRocque acknowledged in his testimony that he did not take Mr. Abell's advice. The Bishop did not instruct Father Dubé to refrain from parish duties until the courts had rendered judgment on the allegations of abuse. However, in early July 1999, Bishop LaRocque asked Father Dubé not to be in the company of youths without adults present.

It is noteworthy that Bishop LaRocque could not recall monitoring Father Lapierre's trial in Cornwall or his joint trial with Father Dubé in Montreal to keep himself informed of the criminal prosecution of priests in his Diocese.

A story on the Cornwall trial of Father Lapierre entitled "Catholic Priest Admits Others in Diocese Confided in Him About Abuse of Boys in Cornwall" appeared in the *Ottawa Citizen* on September 8, 2001. It stated that Father Lapierre had testified at his criminal trial that he was aware for some time that people in the Cornwall community were abusing youths. Father Lapierre denied taking part in the sexual abuse but acknowledged that priests in the Diocese of Alexandria-Cornwall had confided in him about the sexual abuse of boys in eastern Ontario:

A prominent Roman Catholic priest charged with sex crimes under Project Truth confessed in court yesterday that he has long been aware of a group of pedophiles in the Cornwall community.

Under cross-examination while testifying in his own defence, Father Paul Lapierre, 72, repeatedly denied taking part in a sex ring, but told court that priests in the tightly knit diocese, along with others, confided in him over the years about the sexual abuse of boys in Eastern Ontario.

At his trial, Father Lapierre stated that he had received information during confessions regarding the abuse by priests. As I discuss in Chapter 11, this was not pursued by the Crown at the Lapierre trial, which took place in September

2001. Father Lapierre stated that he had communicated this information to Bishop Rosario Brodeur. At the Inquiry, Bishop LaRocque denied that Father Lapierre had discussed the sexual abuse of boys in the Cornwall area with him. Father Lapierre was acquitted on September 13, 2001, on the grounds that the Crown had not proved its case beyond reasonable doubt.

Father Don Scott

Father Don Scott was also a priest in the Diocese of Alexandria when Eugène LaRocque became the Bishop. Father Scott was a pastor in a parish in Maxville. The Bishop decided to move Father Scott in 1975 to St. Raphael's Parish, which was next to Williamstown. Within a short time, Father Scott asked the Bishop to assign him to another parish. In a strained meeting, Bishop LaRocque made it clear to Father Scott that he was to remain in his parish in St. Raphael's. Father Scott subsequently decided to join the Dominican Brothers. In correspondence in 1976 to the Bishop, Father Scott refers to the "unraveling of [his] life."

Bishop LaRocque knew that Father Paul Lapierre and Father Don Scott were friends.

In June 1984, Father Scott wrote to Bishop LaRocque to inform him that he had left the Dominican Brothers and was living in Montreal with a man. Bishop LaRocque visited him. In his correspondence, Father Scott wrote, "Soyez assuré aussi que le style de vie que nous avons discuté est—pour moi—plutôt une question de la position du Magisterium que d'un engagement personnel." As Bishop LaRocque explained, Father Scott was referring to the fact that he was gay and that it was not in accordance with the teachings of the Church. The priest remained incardinated in the Diocese of Alexandria-Cornwall.

Father Scott sent further correspondence to Bishop LaRocque in June 1986, after the Father Gilles Deslauriers matter. The priest wrote: "When I told you why I knew I needed time, you at least knew that I had spared the Diocese and the Church." He further stated:

... I have been made aware of the recent unfortunate happenings that have touched the Diocese with scandal which will if past patterns are repeated, touch the brother priests who are innocent.

Bishop LaRocque testified he did not know what the priest meant by "past patterns are repeated." When he was shown the letter at the Inquiry, Bishop LaRocque reiterated, "I have no idea what was being referred to there."

In the June 1986 correspondence, Father Scott refers to priests who were living double lives—clergy who were not adhering to their priestly vows and who came to Montreal to live a second life:

... I see former colleagues [sic] here in the city taking advantage of what they see as the best of both worlds and I know that they will return to their parishes the next day and they are secure and their future assured.

Bishop LaRocque testified that he did not at that time explore this issue further with Father Scott, nor connect this with priests engaging in sexual relations with young people. Father Scott wrote:

I don't understand—those who hurt the Church are protected and embraced (as well they should be), but one who distants [sic] himself in order to assure himself that he is doing the will of God and who thus protects the Church is forced to live in insecurity and uncertainty.

I know this is not a good time to be honest with you, but I've never been less than honest with you. If I can't speak clearly with you, than [sic] with whom? This is a time of healing and searching that I'm passing through and I just want you to know that I feel badly that I am treated differently than the others.

Father Don Scott died in 1988. His funeral was held in Montreal at St. Dominic's Church. Bishop LaRocque was the celebrant at the funeral. When Father Lapierre told Bishop LaRocque in June 1999 about the sexual abuse committed by Father Scott, Father Scott had been dead for over ten years.

As mentioned, Claude Marleau testified that Father Lapierre had introduced Father Scott to him and that both priests sexually abused him. Father Scott passed away before Project Truth and consequently was not charged for the alleged sexual abuse perpetrated on Claude Marleau.

Bishop Durocher Learns of Criminal Charges

When Paul-André Durocher was installed as Bishop in June 2002, Father Dubé was exercising his ministry without limitations, as he had been acquitted of the criminal charges. Father Paul Lapierre, who was still incardinated in the Diocese, had retired in Montreal. Father Lapierre had been acquitted of the charges in the Ontario prosecution. However, the criminal prosecution in Quebec was ongoing. The Bishop met with Father Lapierre's lawyer to learn more about the criminal charges laid against the priest.

Bishop Durocher testified that Bishop LaRocque was mistaken when he told the Inquiry that the Diocese of Alexandria-Cornwall did not fund the criminal defence of Father Paul Lapierre. The Diocese paid Father Lapierre's legal fees for both the Ontario and the Quebec criminal prosecutions.

Bishop Durocher testified that the Diocese did not seek out the victims of Father Paul Lapierre to determine whether they required counselling. The explanation given was that this was before the 2003 diocesan guidelines came into effect. I do not find this convincing.

Nor did Diocese officials monitor the 2001 trial of Father Paul Lapierre in Cornwall for the purpose of identifying victims of abuse by priests in the Diocese. Eugène LaRocque was the Bishop at that time. In cross-examination at his trial in September 2001, Father Lapierre said that Father Don Scott had discussed with him Father Hollis Lapierre's relationship with Claude Marleau. He was told by Father Scott that Father Hollis Lapierre had Polaroid pictures of naked boys, including photos of Claude Marleau. He said that after Father Hollis Lapierre died in the mid-1970s, Father Scott, the executor of the priest's will, had destroyed the pictures and magazines that had been behind his bed. I discuss this further in this chapter in the section on the allegations of abuse against Father Hollis Lapierre.

Bishop Durocher agreed that it would have been beneficial for the Diocese to monitor the Father Paul Lapierre trial. Victims such as Claude Marleau who alleged that they had been sexually abused by other priests in the Diocese of Alexandria-Cornwall would have been identified.

After Father Lapierre was found guilty in Quebec in June 2004, Bishop Durocher told him that there was a limitation on his faculties. Father Lapierre was not to exercise any public ministry. He was prohibited from preaching and hearing confessions. The Bishop contacted him in Montreal a few months after he was convicted to ensure that the priest was complying with this restriction. Although Father Lapierre resided in Montreal, he was still incardinated in the Diocese of Alexandria-Cornwall. Bishop Durocher learned that Father Lapierre was celebrating weekend masses at a church in Montreal, Saint-Pierre-Apôtre. Bishop Durocher instructed the priest to immediately stop exercising his ministerial functions. He also wrote a letter in October 2004 to the Archdiocese to verify that Father Lapierre was not celebrating mass.

Father Lapierre was never "defrocked"; that is, his clerical status was not removed by the Church. Bishop Durocher explained that loss of clerical status can be imposed only in a penal canonical process and that there is a ten-year limitation period. In other words, in canon law, there is a ten-year limitation period on sexual abuse allegations that begins when the victim reaches eighteen years old. The problem that arose in the Father Lapierre situation, explained Bishop Durocher, was that Claude Marleau was older than twenty-eight years of age when he came forward with the allegations of abuse against the priest. The Bishop testified that because the complaint against the priest was made after the limitation period, the canonical process could not be initiated.

Bishop Durocher acknowledged at the hearings that he has come to the conclusion in the past few years that the Diocese of Alexandria-Cornwall has had a significant problem with clergy sexual abuse.

It is clear that the Diocese and Bishop LaRocque did not sufficiently investigate the allegations of inappropriate contact with young persons by Father Paul Lapierre and Father René Dubé. The Diocese and Bishop LaRocque also knew from Father Paul Lapierre of inappropriate contact by Father Don Scott with a young person. It is also evident that the Diocese and Bishop LaRocque failed to offer counselling and support to Claude Marleau, who alleged he had been abused as a youth by those priests.

It is also my conclusion that the Diocese and Bishop LaRocque failed to take appropriate action to ensure that young persons in the Diocese were not at risk of sexual abuse by these members of the clergy. Moreover, the Diocese, Bishop LaRocque, and Bishop Durocher failed to take appropriate action to identify potential victims in relation to inappropriate contact by these members of the clergy.

Prior to the Inquiry, Bishop Durocher had no knowledge of Father Lapierre's evidence in either the Quebec or the Ontario criminal proceedings.

It is my recommendation that the Bishop and Church officials of the Diocese monitor and/or obtain information on the legal proceedings in which clergy in the Diocese are subject to charges or lawsuits involving sexual abuse of young persons.

Father Ken Martin

Father Ken Martin was ordained in the Diocese of Alexandria in 1958 by Bishop Rosario Brodeur. He served at several parishes in Cornwall, including St. Columban's, Nativity, St. Francis de Sales, and St. Martin de Tours. Father Martin was also a priest at Ste. Thérèse Parish in the Cornwall area before he moved to the province of Quebec.

In July 1997, Claude Marleau reported to Detective Constable Don Genier of the Ontario Provincial Police (OPP) that he had been sexually assaulted as a youth by a number of priests and other men, including Father Ken Martin.

In his statement to Detective Constable Genier on July 31, 1997, Claude Marleau described the details of the alleged sexual abuse by Father Martin. Father Martin was a parish priest in the northern part of the Diocese. Mr. Marleau also told the OPP officer that Father Martin was a friend of his other alleged abusers, Fathers Paul Lapierre and Don Scott. Mr. Marleau said that Father Paul Lapierre had introduced him to Father Martin. This is further discussed in Chapter 7, on the institutional response of the Ontario Provincial Police.

Father Martin asked Claude Marleau if he would like to go on a ski trip. The night before the trip, the priest brought the young Claude to his presbytery. Mr. Marleau testified that the abuse occurred that night. The ski trip, he said, did not take place because of rain.

Claude Marleau thought that the people Father Lapierre introduced him to had the same proclivities and that they knew each other. He described himself as a toy that was passed from one man to another: "C'est sûr que tous les gens qu'il me présentait avaient les mêmes habitudes que lui. J'étais une espèce de jouet qu'on passait d'un à l'autre."

Mr. Marleau testified that he was first abused as a youth by Roch Landry, who worked in a butcher shop and who in turn introduced him to Father Paul Lapierre, who then introduced him to Father Don Scott, Father Hollis Lapierre, Father René Dubé, Father Ken Martin, and George Sandford (Sandy) Lawrence, the owner of a music store. Claude Marleau alleged that he was abused by all these men.

On April 1, 1998, OPP Detective Constables Don Genier and Joe Dupuis interviewed Father Martin. The priest asked if he could make a call to Bishop LaRocque. Although Father Martin had been incardinated into the Diocese of Alexandria in 1958, he had not been in active ministry in the Cornwall area since 1972. Eugène LaRocque became the Bishop of the Diocese in 1974. His predecessor was Bishop Adolphe Proulx and before him, Bishop Joseph-Aurèle Plourde. Father Martin contacted the Diocese and obtained contact information for a lawyer from the Reverend Gordon Bryan.

On April 3, 1998, Crown Attorney Robert Pelletier was provided with a brief on the Father Martin investigation. He was asked to review the brief and provide an opinion on whether criminal charges should be laid. Mr. Pelletier identified consent as an issue but was of the opinion that a preliminary inquiry should be held, after which the case could be re-evaluated.

On May 7, 1998, Crown Attorney Pelletier informed OPP Detective Inspector Tim Smith that he had reviewed the Martin Brief and had come to the conclusion that Claude Marleau was at an age of legal consent in the 1960s. This is discussed in fuller detail in Chapter 11, on the institutional response of the Ministry of the Attorney General.

On July 9, 1998, Father Martin was arrested by the OPP for indecent assault and gross indecency committed against Claude Marleau.

On November 23, 1998, the OPP requested from Bishop LaRocque a photograph of Father Martin taken in approximately 1972. Bishop LaRocque complied with the request, but informed the OPP that he could only provide a photograph from what appeared to be 1989.

On March 5, 1999, OPP Detective Sergeant Pat Hall asked Bishop LaRocque to have Father Martin report to the Long Sault Detachment of the OPP on March

11, 1999, to be processed. Although Bishop LaRocque could not recall this request in his evidence, he acknowledged that it was probably made. Bishop LaRocque could not explain the reason for the priest's failure to present himself to the OPP. When Father Martin did not appear for processing, the OPP contacted Bishop LaRocque's office. On March 16, 1999, Father Martin was arrested by the OPP for indecently assaulting C-109, contrary to section 148 *Criminal Code*.

There was a preliminary inquiry for Paul Lapierre, Sandy Lawrence, Ken Martin, and Arthur Peachey¹⁸ before Justice Gilles Renaud from May 19 to 27, 1999. All of the accused were committed for trial. Claude Marleau testified at the preliminary inquiry, as did C-109. Father Martin was committed to stand trial on May 27, 1999.

The indictment of Father Ken Martin was dated July 29, 1999. The indictment alleged that between January 1, 1966, and December 31, 1967, Father Martin indecently assaulted and committed an act of gross indecency on Claude Marleau, contrary to sections 148 and 149 *Criminal Code*, and that between January 1, 1971, and June 12, 1972, he indecently assaulted C-109. Father Martin pleaded not guilty to all counts.

The trial of Father Ken Martin for the abuse of Claude Marleau and C-109 took place from September 17 to 19, 2001. Judgment was rendered on November 9, 2001.

At the trial, Father Martin denied sexual encounters with Claude Marleau and with C-109. The issue of consent arose at the trial. This is discussed in further detail in Chapter 11.

Father Ken Martin was found not guilty by Justice Robert Cusson of the Ontario Superior Court. Justice Cusson held that the incident of alleged abuse prior to the skiing trip was a private consensual act between two individuals of consenting age. The judge held:

[The accused] was in a position of trust vis-à-vis the complainant. That does not place him in a position of authority and, of itself, does not show the accused as having exercised such authority to influence Mr. Marleau into submitting or consenting to the sexual activity against his will.

...

... [T]he evidence was clear that this was a single event. And without more, it was without doubt with his consent. There is no evidence whatsoever that Kenneth Martin did anything to convince or coax Claude Marleau to do the sexual acts in question.

18. All four men were alleged perpetrators of sexual abuse against Claude Marleau.

In those circumstances, the charge of indecent assault against the accused cannot stand.

With respect to the charge of gross indecency, I agree with the defence that, presuming the acts of fellatio took place between the accused and the complainant, in the circumstances, that cannot constitute acts of gross indecency. These were consensual acts held in private, between two individuals who were of consenting age.

...

... [T]he second count in the indictment is also dismissed.

The charges with respect to the alleged acts perpetrated on C-109 were also dismissed. C-109 alleged that he was indecently assaulted by Father Martin at the rectory at St. Martin de Tours Parish in Glen Robertson between 1970 and 1972.

It took three years, from July 1998, when charges were laid, until fall 2001, for judgment to be rendered. This was a long period for Claude Marleau. He also described the delay of a year after charges were laid for the preliminary inquiry to be held as very lengthy. This is further discussed in Chapter 11.

Response of the Diocese

When Claude Marleau came forward to the OPP in 1997 with his allegations of abuse, Father Martin was incardinated in the Diocese of Alexandria-Cornwall but was working as a chaplain in Montreal in a home for the aged. After he was charged with the alleged abuse of Claude Marleau and C-109, Father Martin continued to be involved in official religious work in Montreal.

At his trial in 2001, Father Martin testified that he was practising as a priest in Pointe Claire, Quebec. He was celebrating mass for people with disabilities and was the chaplain of Villa Marguerite, a convent and a retreat house. Father Martin also stated that he performed baptisms, marriages, and funerals.

Bishop LaRocque testified that Father Martin had left the Diocese of Alexandria in 1972, before he arrived in Cornwall. The Bishop stated that he did not have contact with Father Martin but acknowledged that he may have received letters concerning him.

Bishop LaRocque testified that neither he personally nor anyone acting on his behalf followed the preliminary inquiry or trial of Father Martin. The Bishop explained that Father Martin was not given funds from the Diocese for a lawyer: "Because he had been away from the Diocese for so long, he was not funded by the Diocese." Bishop LaRocque explained that incardination is not necessarily

the test for whether the Diocese pays legal fees. He claimed that he was unaware that Father Martin was found not guilty at his trial in Cornwall, Ontario.

Paul-André Durocher, who became the Bishop of Alexandria-Cornwall in 2002, did not recall having discussions with Bishop LaRocque regarding Father Martin. He learned that Father Martin was retired in Montreal and doing replacement ministry in the Diocese of Montreal. At the time of his testimony, Bishop Durocher confirmed Father Martin was still incardinated in the Diocese of Alexandria-Cornwall.

The 1996 “Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants” were in effect at the time criminal charges were laid against Father Martin. Father Martin was not removed from pastoral duties when he was charged. Father Martin testified at his trial that he was still in pastoral positions. As mentioned, the diocesan guidelines state:

... If the situation warrants it, (because there is a risk to the alleged aggressor, or the possibility of a risk to other members of the community, because the events have become public, because charges will be laid, because a trial will take place) the Bishop removes the suspected aggressor from Church duties.

It further states:

3. Should there be an allegation of an indictable offense, with one or more of the following conditions present:

- a) risk to the alleged aggressor;
- b) possibility of risk to members of the community;
- c) because the events have become public;
- d) because charges will be laid;
- e) because a trial will take place;

the accused priest will be removed from his position and placed on a leave of absence. After six month [sic], the removal becomes permanent.

These guidelines remain in effect in the Diocese of Alexandria-Cornwall.

Bishop Durocher received a letter from Gary Guzzo within a few days of his installation as bishop on June 14, 2002. The letter stated: “When one reviews the admissions that came in the evidence in the Lapierre trial and Martin trial, one cannot help but expect an explanation from the church and the diocese. None has been forthcoming.” Bishop Durocher did not respond to the letter.

In my view, the Diocese and the Bishop of the Diocese of Alexandria-Cornwall should have monitored the preliminary inquiry and trial of Father Ken Martin for allegations of sexual abuse against two young people in Cornwall. It is clear that the Diocese and Bishop LaRocque did not sufficiently investigate the allegations of inappropriate contact by Father Ken Martin with these young persons. Given that Father Martin remained incardinated in the Diocese of Alexandria-Cornwall, the Bishop and the Diocese ought to have taken measures to ensure that relevant information was provided to outside dioceses regarding the allegations and that Father Martin's faculties were removed. Moreover, the Diocese of Alexandria-Cornwall, Bishop LaRocque, and Bishop Durocher did not attempt to identify other potential victims in relation to allegations of inappropriate contact with young persons by Father Martin. In addition, the Diocese, Bishop LaRocque, and Bishop Durocher do not appear to have provided counselling assistance and support to alleged victims of Father Ken Martin, such as Claude Marleau.

Father Hollis Lapierre

Father Hollis Lapierre was born in the United States. He was ordained in Quebec in 1949 by Bishop Rosario Brodeur. He was at several parishes in the Cornwall area from 1950 until his death in 1975. They included St. John Bosco, St. Columban's, St. Félix-de-Valois, Sacred Heart, Nativity, Greenfield, and Ingleside.

In 1965, Father Réjean Lebrun received a complaint of alleged sexual abuse involving Father Hollis Lapierre. At that time, Father Lebrun was a vicar in a Cornwall parish, St. Francis de Sales.

A young man of about twenty years old came to see Father Lebrun. He disclosed to the priest that he was gay and had a lover, but that his mother objected to this relationship. The young man asked Father Lebrun what he thought about the relationship. The priest responded that it did not conform to Christian morals and that he should not engage in such behaviour. The young man lost his patience and asked Father Lebrun what he would do about Father Hollis Lapierre, who was amusing himself with young people. As Father Lebrun said in his evidence at the Inquiry:

Un jeune homme dans la vingtaine est venu me voir. Il m'a confié qu'il était gai, qu'il avait un amant qui voulait l'emmener chez lui pour coucher avec lui. Et que sa mère s'y objectait. Et qu'est-ce que j'en pensais. Je lui ai répondu que c'était mal aux yeux de la morale chrétienne. Qu'il ne pouvait pas faire ça. Alors ça l'a impatienté. Il m'a répondu "Alors, que faites-vous du père Hollis Lapierre qui s'amuse avec les jeunes?"

The young man did not provide the names of the alleged victims or other identifying information such as their approximate ages. Nor did he provide any details of the incidents, such as the location at which these alleged acts occurred, testified Father Lebrun.

Father Lebrun stated that he did not discuss this matter with Father Hollis Lapierre. Father Lebrun also testified that he did not subsequently receive any complaints from alleged victims of the priest.

After this meeting with the young man, Father Lebrun went to see Joseph-Aurèle Plourde, the Auxiliary Bishop at the time. Father Lebrun related what the young man had told him about Father Hollis Lapierre. Bishop Plourde did not discuss what he intended to do with this information. Father Lebrun testified that after this meeting, his involvement in this matter ended and that he did not encounter the young man again.

At the Inquiry, Claude Marleau testified that during his youth he was abused by several priests, one of whom was Father Hollis Lapierre. As I discuss in Chapter 7, Mr. Marleau disclosed to the Ontario Provincial Police (OPP) in the Project Truth investigation that he had been sexually abused by several men, including Father Hollis Lapierre. Mr. Marleau testified that he was introduced to Father Lapierre in the mid-1960s by another priest, Father Don Scott. At that time, Claude Marleau was a high school student. He stated that Fathers Hollis Lapierre, Don Scott, and Paul Lapierre were good friends. Mr. Marleau alleged that all three priests abused him, as did other men in the Cornwall community. As I discuss in this chapter, Father Paul Lapierre was found guilty in Quebec of indecently assaulting Claude Marleau.

Mr. Marleau testified at the Inquiry that Father Hollis Lapierre first abused him in the presbytery where the priest resided, in a garage under his bedroom. He stated that the sexual abuse occurred on several occasions, at least four or five times, all in the same location. Mr. Marleau testified that Father Hollis Lapierre took Polaroid pictures of him naked. He also stated that the priest showed him a series of photographs, and he recognized a schoolmate.

Father Hollis Lapierre died in 1975, prior to the OPP Project Truth investigation.

Approximately thirty years after his alleged sexual abuse, Claude Marleau made a complaint to the OPP regarding Father Hollis Lapierre. OPP Detective Constable Don Genier was assigned by Detective Sergeant Pat Hall to interview Claude Marleau. Although Mr. Marleau could not initially recall Father Hollis Lapierre's name, he was later able to confirm the identity of the priest. Mr. Marleau had interviews with the OPP in 1997 and 1998.

As mentioned in Chapter 7, Detective Sergeant Hall discussed the Project Truth investigation with Bishop Eugène LaRocque on March 20, 1998, and asked the Bishop for information on the location of twenty-seven priests. On June 18,

1998, Detective Sergeant Hall met with Bishop LaRocque to clarify information regarding Father Hollis Lapierre.

In a statement given to Detective Constable Genier on October 20, 1998, Claude Marleau reviewed a document written by Françoise Laflamme that provided information on Father Hollis Lapierre. Mr. Marleau confirmed the identity of Father Hollis Lapierre, the layout of the rectory, and the priest's friends for the OPP in October 1998.

At Father Paul Lapierre's Ontario trial in 2001, discussed earlier, the accused priest testified, "Father Donald Scott ... shared with me ... about Father Hollis Lapierre[']s relationship with Claude Marleau ... how expensive it was ... I was told by Father Don Scott ... that Father Hollis Lapierre kept Polaroid pictures of naked boys." Father Paul Lapierre testified that his conversation with Father Scott took place after the death of Father Hollis Lapierre in 1975. He further testified that Father Scott was the executor of Hollis Lapierre's will and said that Father Scott "had been asked to destroy those pictures and all the magazines behind his bed ... in the little wall."

Father Paul Lapierre testified at his trial in Ontario that he learned through Father Scott that Claude Marleau had been abused by Father Hollis Lapierre. Paul Lapierre further stated at his trial that he did not reveal the information provided to him by Father Scott regarding the abuse by Father Hollis Lapierre because "it was a matter of conscience." This is discussed further in this chapter.

Bishop LaRocque acknowledged that the evidence with regard to Father Hollis Lapierre at the trial of Father Paul Lapierre would have been of concern to him and other Church officials in the Diocese. As mentioned, Father Hollis Lapierre was dead at the time of Father Paul Lapierre's trial. The Bishop acknowledged that this evidence raised several issues. Bishop Paul-André Durocher agreed that it would have been valuable to have someone from the Diocese attend and monitor judicial proceedings such as Father Paul Lapierre's trial. Bishop LaRocque had no recollection of speaking with Father Paul Lapierre after this priest gave evidence at his trial. As discussed, Father Paul Lapierre was acquitted in Ontario by Justice Lalonde in September 2001 for indecent assault and gross indecency of Claude Marleau, but was convicted of these offences in Quebec in 2004 by Justice Garneau.

Paul-André Durocher became the Bishop of the Diocese of Alexandria-Cornwall in 2002. Bishop Durocher has no recollection of any discussion with Bishop LaRocque regarding Father Hollis Lapierre. Bishop Durocher did not contact Claude Marleau after Father Paul Lapierre's criminal conviction in Quebec. Perhaps if he had spoken to Claude Marleau at that time, he would have learned about the allegations of sexual abuse perpetrated by Hollis Lapierre in Mr. Marleau's youth. Moreover, Bishop Durocher never offered Mr. Marleau an

apology or sent him a note or offered him counselling. As Bishop Durocher said at the hearings, “I didn’t think of it.” Bishop Durocher stated that it is difficult to deal with alleged victims “because we don’t know where the truth lies. It’s made more difficult when there are lawsuits involved in the process.” While that may be true, in this case, the courts had convicted Father Paul Lapierre and Mr. Marleau never commenced a lawsuit against the Diocese arising from these incidents. Bishop Durocher also said that in canon law, there is a ten-year statute of limitations for allegations of sexual abuse that begins to run when the victim reaches the age of eighteen years old. As mentioned, he agreed that there is always the possibility of asking Church officials in Rome for a dispensation of the limitation period.

Mr. Marleau confirmed at the Inquiry that he was never contacted by the Diocese of Alexandria-Cornwall after the judgment of Justice Lalonde in Father Paul Lapierre’s trial. He said that the Diocese never apologized to him and never communicated with him to discuss the comments regarding Father Hollis Lapierre. To Claude Marleau’s knowledge, Church officials in the Diocese did not conduct an internal investigation on the alleged allegations of priests in the Diocese regarding his abuse. Mr. Marleau believed that Church authorities in the Diocese, such as Bishop Brodeur, were aware of the alleged abuse. Mr. Marleau also stated that Father Hollis Lapierre had a housekeeper, who he thought probably had some information on the improper behaviour of the priest. Mr. Marleau also thought possibly others in the Diocese would have seen Father Hollis Lapierre bring him onto Church property. Yet Claude Marleau stated that others in the Diocese of Alexandria-Cornwall never asked him any questions about his relationship or activities with the priest.

In my view, the Diocese, Bishop LaRocque, and Bishop Durocher failed to take appropriate action to identify potential victims of Father Hollis Lapierre. Had Father Paul Lapierre’s criminal proceedings been followed or the transcript reviewed, potential victims of Father Hollis Lapierre could have been identified. It is also clear that the Diocese failed to provide counselling or assistance to alleged victims abused by Father Hollis Lapierre, such as Claude Marleau.

Father Lucien Lussier

Father Lucien Lussier was born in the United States and studied at Saint-Hyacinthe Seminary in Quebec. He was ordained in 1955 by Bishop Rosario Brodeur at St. Finnan Cathedral in the Diocese of Alexandria.

Father Lussier was a parish priest at St. Martin de Tours in Glen Robertson. On April 29, 1967, parishioner Michel Lalonde wrote a letter to the Diocese of Alexandria, complaining of Father Lussier’s dealing with a young man. In the

letter, Mr. Lalonde described his observations as well as the observations of other parishioners at St. Martin de Tours Parish. They were concerned about the relationship between Father Lussier and a boy who was fifteen years old. He was the verger in the parish and assisted during church services.¹⁹

Father Lussier was in the company of this boy so frequently that it had disturbed parishioners. The letter stated that the priest and the youth had become inseparable in the last year and a half. Michel Lalonde, who was a teacher at the village school in Glen Robertson, noted that when the boy attended the school, Father Lussier would sit near the schoolyard during recess and observe and photograph the youths playing ball. He further stated that the young man was now attending high school in Alexandria and that Father Lussier was seen meeting him at the school, waiting for him at the school bus stop, and meeting him at the presbytery, where the young man would go after school. The writer further noted in the letter that Gilles Joannette, the principal of a school, had seen Father Lussier giving the boy a driving lesson. He said the fifteen-year-old boy was sitting on the priest's knees.

Mr. Lalonde stated in the correspondence that he believed the matter merited serious consideration. It was evident that the relationship between the boy and the priest was more than friendly and was in fact abnormal:

Je crois que la situation mérite une très sérieuse consid[é]ration et que c'était mon devoir de vous renseigner à ce sujet. Les paroissiens et les élèves de Glen Robertson ne sont pas fous et il est évident qu'il existe une relation plus qu'amicale et certainement anormale entre [name of boy] et M. le Curé. Des personnes peuvent affirmer les avoir vu presque tous les soirs depuis quelques temps passer des heures seuls dans l'auto de M. le Curé dans la cour des [surname of boy] et cela jusqu'à onze heures et plus tard encore. La situation en est choquante. Ceux qui ont remarqué M. le Curé quitter la cour des [surname of boy] à des heures tardives ont aussi remarqué que M. le Curé n'allumait pas les phares de son automobile, s'[é]clairant des lumi[è]res de la rue, et faisait un d[é]tour pour revenir au presbytère.

People reported seeing the young man and Father Lussier spending time alone in the priest's parked car almost every night until late hours. Mr. Lalonde wrote that the situation was shocking and that the priest would leave the young man's

19. The French word "bedeau" is translated as "verger." A verger is a Church official who serves as an usher or sacristan or keeps order during services.

yard with his lights off and take a circuitous route when he returned to the parish. Father Réjean Lebrun, Vice Chancellor for the Diocese, agreed that in 1967 this sort of behaviour was shocking and considered inappropriate.

Joseph-Aurèle Plourde was the Auxiliary Bishop of the Diocese of Alexandria from 1964 to 1967. Bishop Adolphe Proulx arrived in the Diocese in June 1967. In April 1967, when the Diocese received the letter from the parishioner at Father Lussier's church, there was no bishop. An administrative vicar had been appointed to administer the Diocese. Bishop Proulx was not familiar with the priests in the Diocese when he arrived in the Cornwall area that summer, according to Father Lebrun.

Bishop Proulx met with a delegation from St. Martin de Tours Parish, in Glen Robertson. They wanted to discuss complaints about their priest, Father Lussier. The Bishop asked Father Lebrun to act as a witness at the meeting with the delegation from the parish. Father Lebrun testified that he was not aware of the April 29, 1967, letter. When asked if he inferred from the discussion that this was a sexual abuse complaint, Father Lebrun responded that it crossed his mind. He testified that he asked himself whether this was a sexual abuse complaint but did not pursue the issue with the Bishop.

At the meeting with Father Lebrun and Bishop Proulx, the parishioners discussed their strained relationship with Father Lussier. Father Lebrun testified that Father Lussier had a somewhat unusual temperament and that he had made a number of enemies in the parish: "Père Lussier a un tempérament un peu spécial et puis il s'était fait plusieurs ennemis dans la paroisse pour ainsi dire." Members of his parish wanted him to leave. They mentioned a friendship between a young man and Father Lussier but did not elaborate or discuss the contents of the April 29, 1967, letter. Father Lebrun testified that when he learned of the friendship, he did not become concerned. He stated that in 1967, he may have been naïve and not sensitive to issues of abuse. He considered the relationship somewhat curious but not more than that. Bishop Proulx did not ask Father Lebrun to follow up after the meeting.

After the meeting with the parishioners from St. Martin de Tours, Bishop Proulx reassigned Father Lussier to another parish. In a letter to Father Lussier on May 21, 1968, Bishop Proulx thanked him for his good service as the pastor of the parish at Glen Robertson. He stated that a group of followers had not accepted him for reasons he did not want to judge, nor had they made life easy for him. Bishop Proulx informed the priest that he would be sent to the St. Guillaume de Martintown Parish:

Je vous remercie pour les bons services que vous nous avez rendus depuis votre arrivée [sic] dans le Diocèse et comme Curé de la Paroisse

de Glen Robertson. Comme vous le savez sans doute, un certain groupe de fidèles pour des raisons que je ne veux pas juger, ne vous ont pas toujours accepté ni fait la vie facile. J'ai pensé qu'il était préférable dans les circonstances, de vous nommer ailleurs où vous pourrez faire un travail apostolique dans la paix et la concorde.

This letter was sent more than a year after the parishioners' initial letter of April 29, 1967.

Father Lebrun did not know whether the Bishop conducted an investigation into the allegations set out in Michel Lalonde's letter. He was not aware of a police investigation or any other investigation into the allegations. Father Lebrun testified that he never met the young man referred to in the 1967 letter and did not know if anyone from the Diocese met with him. Nor did Father Lebrun discuss the situation with Father Lussier. Father Lebrun commented in his testimony that what he might recognize as suspicious conduct now, he would not have recognized as such in 1967.

Bishop Proulx met with Father Lussier on January 26, 1972, to discuss difficulties he was having with nuns and parishioners in Martintown. The Bishop wanted Father Lussier to voluntarily resign. Inscribed in Bishop Proulx's notes was that he would await Father Lussier's resignation, which he hoped to receive in June, failing which he would remove the priest from his position. Bishop Proulx made no promises to Father Lussier about another assignment.

On June 28, 1972, Bishop Proulx announced the appointment of Father Lussier to the parish of Dalkeith and Lochiel, in Glengarry County.

It is clear to me that the complaint in 1967 about Father Lussier was not a situation of rumours and innuendo. The parishioners had brought this matter to the Bishop formally in writing and had pursued it vigorously. This was a direct complaint regarding intimate contact of the priest with a fifteen-year-old boy. Even in 1967, parishioners were concerned about such issues and wished to discuss this matter with the Church in order to address the situation.

Problems With the Priest Persist

On October 21, 1993, Gilles Sabourin and René Lalonde sent a letter to Bishop Eugène LaRocque outlining their concerns regarding Father Lussier at his parish in Moose Creek. The letter was also copied to Father Evariste Martin, Father George Maloney, and Father Réjean Lebrun. Bishop LaRocque did not recall receiving the October 21, 1993, letter when he gave his evidence but did remember the great difficulties with Father Lussier at Moose Creek. The Bishop knew that Father Lussier had a difficult temperament. Bishop LaRocque often received

complaints about Father Lussier between 1974 and 1993 regarding the content of his sermons and the priest's personality. However, the Bishop claimed that he never received any complaints about sexual misconduct by him.

In the October 21, 1993, letter, the parishioners referred to a meeting Bishop LaRocque had previously had with several members of the parish, on June 30, 1993, at Moose Creek, an area visited by the Bishop on several occasions. The parishioners said they were no longer capable of dealing with Father Lussier's public insults, sexist remarks, and verbal abuse. Bishop LaRocque undertook to address the issue within the next eight to nine weeks. The parishioners offered him a period of three months to find a replacement for the priest.

In the letter, they also referred to a second meeting with Bishop LaRocque, which was held on October 7, 1993. They noted that in the previous three months, nothing had occurred to address the situation and they had not received any communication from the Bishop to advise them of his intervention. The spokespersons for the Moose Creek parishioners noted that when they met with the Bishop for a second time, his reception of them was as cold as at the first meeting. Bishop LaRocque, according to the correspondence, had told them he had more important things to deal with and did not know if he could replace his priest. He mentioned that a priest had to retire at seventy-five years of age. The Bishop had told them that Moose Creek parishioners had the reputation of being the most critical:

Après 3 mois d'attente, rien ne se passé, pas de lettre ni d'appel de notre évêque pour nous aviser de son intervention.

Moi-même, Gilles Sabourin et René Lalonde, à titre de porte-parole des paroissiens, de Moose Creek, rencontrons l'évêque sur rendez-vous, pour une deuxième fois.

Son accueil est aussi froid que la première fois. Il nous dit qu'il a des choses plus importantes à s'occuper et qu'il ne voit pas quand il pourra remplacer notre curé. Il mentionne, par contre, qu'un prêtre doit se retirer à l'âge de 75 ans. Ensuite il nous dit que les paroissiens de Moose Creek ont la réputation d'être les plus "chialeux" et "critiqueux."

Bishop LaRocque recalled a discussion of the nature described in the letter. The Bishop claimed that when he said he had other more important things to deal with, he was referring to all the responsibilities of a bishop. He testified that at the time, he was the president of the Bishops of Ontario. He had meetings in Toronto almost every two weeks and was often absent from the Diocese.

In the letter, parishioners again asked Bishop LaRocque to intervene by the end of the month, October 1993, failing which they would seek recourse in the courts and/or in the media:

Nous sommes arrivés à notre dernière intervention auprès de vous.
Si aucune action n'est prise d'ici à la fin octobre, nous agirons
par voie publique et/ou par voie judiciaire. Nous sommes prêts à
aider le père Lussier à se retirer d'une façon honorable et digne
d'un prêtre, mais nous ne sommes pas prêts à subir ses abus verbaux,
ad vitam eternam.

Nous vous prions donc de ne pas attendre que le père Lussier soit
obligé de répondre à des accusations judiciaires ou qu'il fasse l'objet
des journaux locaux.

Dans votre grande sagesse Mgr. LaRocque, et avec l'aide de l'Esprit
Saint, sûrement vous pouvez trouver une solution à notre grave
problème qui dure depuis 14 ans, et auquel vous nous avez dit que
nous aurions à endurer encore 5 ans à venir.

Bishop LaRocque testified that he does not think he was aware in 1993 of the 1967 letter written by Michel Lalonde regarding complaints about Father Lussier by parishioners. Bishop LaRocque also did not recall discussions with Father Lebrun about Father Lussier but knew that a number of priests were aware of his difficulties with the parishioners.

Father Lebrun denied that he had heard anything about allegations of a sexual nature regarding Father Lussier in 1993. He was aware that Father Lussier was quick tempered and that this often complicated things. Father Lebrun was a parish priest at St. James Church in Maxville, approximately five or six miles from Moose Creek, where Father Lussier was a parish priest. People often came to see Father Lebrun about Father Lussier. He stated that he listened to them but told them he was not Father Lussier's superior and that they should address their concerns with the Bishop.

Father Lebrun was copied on the October 21, 1993, letter to Bishop LaRocque. Gilles Sabourin, whom Father Lebrun knew, taught at the Catholic School of Maxville at this time. He came to see Father Lebrun on a few occasions and made it clear that he wanted things to change in Moose Creek.

Father Lebrun did not attend the meetings with Bishop LaRocque that were discussed in the October 21, 1993, letter. He was provided with a copy of the letter before it was sent to the Bishop but did not take any action since the problem

was outside of his domain. Father Lebrun testified that it was very likely that the Bishop and he spoke about the complaints against Father Lussier.

Father Lussier was asked by Bishop LaRocque to retire. Bishop LaRocque met with the priest to discuss the complaints of parishioners. He told Father Lussier that he was approaching retirement age. Father Lussier agreed to resign. By letter dated October 29, 1993, Bishop LaRocque accepted the priest's resignation. Bishop LaRocque indicated that Father Lussier would stay with him while he contemplated his plans for his retirement. Father Lussier remained incardinated in the Diocese of Alexandria-Cornwall.

Father Lussier Returns to the Diocese

Father Lussier spent several years with his sister in the United States. He returned to the Diocese of Alexandria-Cornwall in 1997, and Bishop LaRocque asked him to go for an assessment at Southdown Institute.

On July 3, 1997, Bishop LaRocque received a letter from Dr. Ruth Droege, the director of assessment at Southdown, confirming that Father Lussier was to attend for the assessment on July 27, 1997. The letter further stated:

If you have not already done so, I suggest that you share with Father Lucien the information for the assessment that you shared with me, to the extent possible. It would also be helpful for you to have discussed with Father Lucien your need to receive the written assessment report. At the beginning of the week, Father Lucien will be asked to sign a release of information indicating his willingness to communicate to you the assessment findings. The assessment will not proceed until this is one, unless another agreement between you and Father Lucien has been mutually reached.

The feedback session will be held by phone at **2:00 p.m. on Friday, August 1, 1997**. Southdown welcomes your participation in the assessment which provides an opportunity for your concerns, together with those of individual assessed, to be heard.

As scheduled, on August 1, 1997, Bishop LaRocque received a telephone call from a therapist at Southdown concerning Father Lussier. Inscribed in notes by Bishop LaRocque are: "In the past was active with men (17+18) & women who approached him first." This note referred to a question the Bishop had asked the therapist about the age of the young people involved. Bishop LaRocque's notes read: "He did not initiate these actions. He has not been sexually active since 60. Avoid contact with young men. This is merely good judgment." Bishop

LaRocque could not recall what the therapist meant by this. The Bishop testified that the emphasis appeared to be on the priest's temper and not on his difficulties with youths or sexuality.

Bishop LaRocque could not recall the findings of the assessment or the length of time Father Lussier remained at Southdown. Bishop LaRocque typically received reports from Southdown when he sent a priest to this facility. The priest was asked if he would sign a release, as mentioned in the letter from Dr. Ruth Droege, to permit the Bishop to see the reports.

After his assessment at Southdown, Father Lussier returned to the Diocese of Alexandria-Cornwall and was appointed by the Bishop as chaplain on August 17, 1998, at St. Joseph's Villa, a retirement home. The Reverend Gordon Bryan was asked by Bishop LaRocque to move Father Lussier into housing close to St. Joseph's Villa. The Reverend was on the board of the Villa at that time. He was aware that Father Lussier had been to Southdown the year prior, as the assessment had been billed to the office at the Diocese. When asked why Father Lussier had been sent to Southdown, Gordon Bryan indicated that it was either for alcohol problems or for anger management. He was aware that the priest angered easily but denied any knowledge of allegations of sexual abuse concerning Father Lussier.

In his letter confirming Father Lussier's appointment as chaplain, Bishop LaRocque stated that at the end of February 1999, the priest would be evaluated and an assessment would be done to determine whether he would continue in this position. Bishop LaRocque did not recall if this evaluation took place but knew that Father Lussier had difficulty there as well. He stated that the priest was arrogant and had insulted people. At a certain point, Bishop LaRocque removed him from the position as chaplain of the St. Joseph's Villa.

Father Lussier's File Not Read by Bishops

Bishop LaRocque confirmed that the 1967 letter sent by Michel Lalonde in Lucien Lussier's personnel file was not provided to the Ontario Provincial Police in 1998 because it was not specifically requested. Bishop LaRocque did not recall reviewing Father Lussier's file. He did not recall seeing Michel Lalonde's letter of April 29, 1967, nor meeting Mr. Lalonde. Bishop LaRocque first saw the letter in preparation for his testimony at the Inquiry. When the Bishop arrived in the Diocese, Father Lussier was in another parish in the north of the Diocese and no longer in Glen Robertson Parish at St. Martin de Tours.

Bishop Paul-André Durocher could not recall any conversations with Bishop LaRocque regarding Father Lucien Lussier but stated that they might have discussed the priest since Father Lussier continued to be involved in replacement ministry, filling in for other priests in the parishes. Bishop Durocher testified

that he was not told by Bishop LaRocque that Father Lussier had been sent to Southdown. Bishop Durocher claimed that all the information he obtained regarding Father Lussier came from his personnel file.

Bishop Durocher, as a general rule, did not review the personnel files of priests. However, because of the requests of some priests, the Bishop gradually examined files over the years. Bishop Durocher looked at the files of the individuals involved in the Project Truth cases. He did not read Father Lussier's file at that time. There was no complaint against Father Lussier when Bishop Durocher arrived in 2004, so he saw no reason to read his file.

Bishop Durocher read Father Lussier's file only after a lawsuit was launched. The personnel file contained the April 29, 1967, letter discussed earlier, which outlined the alleged activities of Father Lussier with a young person in the parish.

In my view, the Diocese failed to sufficiently investigate the allegations of inappropriate contact with a young person by Father Lucien Lussier. It also failed to take appropriate action to identify potential victims of Father Lussier. Moreover, the Diocese failed to take appropriate action to ensure that young persons in the community would not be at risk of inappropriate contact by Father Lussier. It is also evident that the Diocese failed to provide training on the appropriate response to allegations of sexual misconduct by clergy involving young people.

It is also my view that Bishop Eugène LaRocque ought to have known of the inappropriate contact with young persons involving Father Lussier. He consequently did not take appropriate action to ensure that young persons in the community would not be at risk. In addition, he failed to take appropriate action to identify potential victims in relation to allegations of inappropriate contact by Father Lussier. Bishop LaRocque also failed to provide training to Church officials in his Diocese on how to respond to allegations of sexual misconduct by clergy.

In my opinion, it is very important that the outgoing Bishop of the Diocese of Alexandria-Cornwall inform the incoming Bishop with respect to allegations of sexual misconduct by members of the clergy with young persons in the community. It is also important that bishops and other Church officials be conversant with the material in the personnel files of the priests, particularly with respect to allegations of sexual misconduct. Had this been done, Bishop Paul-André Durocher could have taken appropriate action to investigate the allegation of inappropriate contact by Father Lussier and could have taken action to identify potential victims in relation to these allegations.

Father François Lefebvre

Bishop Eugène LaRocque testified that he first learned of an allegation of sexual abuse against Father François Lefebvre when the complainant, André Gauthier,

came to see him in February 1994. Mr. Gauthier told the Bishop that it was on the advice of his psychologist at the Cornwall General Hospital that he was meeting to discuss the abuse he alleged had been perpetrated by Father Lefebvre, a priest in the Diocese of Alexandria-Cornwall.

After learning of the allegations of sexual abuse, Bishop LaRocque asked Mr. Gauthier for forgiveness on behalf of the Church, as Father Lefebvre was dead. The priest had died many years earlier, in 1978, at the age of seventy-six. According to the Bishop, Mr. Gauthier was aware that Father Lefebvre was dead at the time he made this complaint to the Church. Bishop LaRocque testified that he asked Mr. Gauthier not to blame himself and to pray for Father Lefebvre to help him forgive the priest and to heal. The Bishop further claimed that he told Mr. Gauthier that if he needed additional support or assistance, the Church would be prepared to give him this help. Bishop LaRocque testified that this was in conformity with the diocesan sexual abuse guidelines of offering financial assistance for counselling or psychiatric support to alleged victims of sexual abuse by members of the clergy.

Bishop LaRocque knew that Father Lefebvre had been a chaplain for seven years at Juvénat du Sacré-Coeur, a school for boys in grade 9 and 10 in Summers-town. Bishop LaRocque testified that he thought he asked someone at this institution if they had received any complaints.

Bishop LaRocque received a letter dated May 5, 1995, from lawyer Howard Yegendorf. Mr. Yegendorf wrote that he represented André Gauthier and that Father François Lefebvre had sexually abused his client for twenty years, between approximately 1955 and 1975. He stated that the abuse began when André Gauthier was ten years old and that "Mr. Gauthier has been seriously damaged as a result of the abuse."

On the instructions of Bishop LaRocque, the Reverend Gordon Bryan sent a letter dated May 17, 1995, to the Diocese lawyer, Peter Annis, at the law firm Scott & Aylen. He enclosed Mr. Yegendorf's correspondence and provided some background information regarding Father Lefebvre. He stated that the priest had been a chaplain in the Canadian army from 1943 to 1945 and then served in various parishes, such as Holy Cross, St. Francis de Sales, and St. Joseph's. From 1968 to 1975, he was the chaplain at Juvénat du Sacré-Coeur. From 1975 until his death, he lived at St. Joseph's Villa. He was the chaplain at St. Joseph's Villa until 1977.

The Reverend Bryan had himself been a parishioner of Father Lefebvre when he was a teenager. However, he testified that he had no prior knowledge of any allegations of abuse against Father Lefebvre. The Reverend Bryan was not aware of the outcome of civil litigation against the Diocese and the Estate of François Lefebvre.

In 2002, Paul-André Durocher became the Bishop of the Diocese of Alexandria-Cornwall. Bishop Durocher read Father François Lefebvre's file when the civil lawsuit was initiated, which was during the time he was Bishop. Although André Gauthier had disclosed his allegations to officials in the Diocese in 1994, a civil lawsuit was not filed until later, when Paul-André Durocher was Bishop of the Diocese.

In my view, notwithstanding the death of Father Lefebvre and the passage of time, the Diocese should have made a concerted effort to try to identify potential victims of Father François Lefebvre in order to offer these alleged victims of sexual abuse any needed support, assistance, or counselling.

I have commented on several occasions that the Diocese did not take steps to identify further potential victims of clergy sexual abuse. As was explained by a number of the context experts, sexual abuse is generally underreported. As a result, there may be victims of clergy sexual abuse of the Diocese who have not yet come forward. Because of this, and because there have been a number of confirmed cases of abuse of young people by clergy in the Diocese of Alexandria-Cornwall, as well as other reports of allegations of sexual abuse by diocesan clergy, the Diocese should make a public appeal and consider making an apology. As a part of its appeal, I recommend that the Diocese offer counselling and support to any alleged victims of clergy sexual abuse who come forward.

Recommendations

Encourage Report to Police

1. The Bishop, priests, employees, and volunteers of the Diocese of Alexandria-Cornwall should encourage individuals who disclose the sexual assault/abuse²⁰ of an individual over the age of sixteen years old to report their allegation to the police.

Immediate Report to Children's Aid Society

2. The Diocese should add a provision to its "Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers" (2003) that states that when a bishop is informed of an allegation of sexual assault/abuse made against a clergy member or diocesan employee or volunteer, he should report it to the civil authorities immediately, rather than waiting to make this report until after undertaking a preliminary inquiry.

Settlement Documents

3. The Diocese should carefully review settlement documents that are entered into by the Diocese and alleged victims of sexual assault/abuse to ensure that they contain no confidentiality clauses.

Information Sharing Within the Diocese and Among Dioceses

4. The Diocese should openly exchange information with other dioceses about allegations of sexual assault/abuse. If allegations of sexual assault/abuse arise against a priest who is not incardinated in the Diocese of Alexandria-Cornwall but is working within the Diocese of Alexandria-Cornwall, the Diocese of Alexandria-Cornwall should inform the diocese within which the accused priest is incardinated or the religious order with which he is affiliated of the allegations, with full particulars. If allegations of sexual assault/abuse arise against a priest who is incardinated within the Diocese of Alexandria-Cornwall but is working within a different diocese, the Diocese of Alexandria-Cornwall should inform that other diocese of the allegations, with full particulars.

20. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

5. A diocesan protocol should be amended or a new protocol be developed to require that an outgoing bishop of the Diocese of Alexandria-Cornwall inform incoming bishops of allegations of sexual misconduct by members of the clergy, employees, or volunteers in the Diocese with children and young people in the community.

Note Taking and Record Keeping

6. The Bishop of the Diocese of Alexandria-Cornwall should maintain accurate records of allegations of sexual assault/abuse made against clergy members, employees, or volunteers in the Diocese.
7. The Bishop of the Diocese of Alexandria-Cornwall and other Church officials should be conversant with the material in the personnel files of priests, particularly with respect to allegations of sexual misconduct.

Training

8. All members of the clergy and employees and volunteers of the Diocese of Alexandria-Cornwall should receive ongoing training about sexual assault/abuse. Those individuals delegated by the Diocese to have contact with victims who have been allegedly sexually assaulted/abused by members of the clergy or by diocesan employees or volunteers should receive specialized training on sexual assault/abuse. This training should address child sexual assault/abuse, historical sexual assault/abuse, and male sexual victimization. These individuals should also receive ongoing training and be required to attend regular refresher courses.
9. It is important that the bishop, priests, employees, and volunteers of the Diocese receive ongoing training regarding their statutory reporting duties to the Children's Aid Society under the *Child and Family Services Act* to ensure that children at risk are protected.

Screening

10. The Diocese should institute rigorous procedures for evaluating the suitability of candidates it plans to present for study at the seminary. It should also institute rigorous procedures to continually monitor and evaluate the suitability of candidates it presented to the seminary throughout the candidates' time there.
11. The Diocese should institute rigorous procedures to continually evaluate the suitability of its priests for ministry.

Diocese's Response to Allegations Against a Clergy Member or a Diocesan Employee or Volunteer

12. The Diocese should amend its existing protocols or create new protocols to address the following issues regarding its response to allegations against a clergy member or a diocesan employee or volunteer:
 - a. Upon being informed of an allegation of sexual assault/abuse against a priest, the bishop should immediately suspend the priest from active ministry. The priest should not be returned to active ministry until a criminal, civil, and/or internal process is completed.
 - b. The bishop must not be present when the individual who allegedly perpetrated sexual assault/abuse is speaking with his lawyer. This information is protected by solicitor-client privilege. The bishop should take a neutral approach because he has responsibilities not only to the alleged perpetrator but also to the alleged victim and the parishioners.
 - c. The "Diocesan Guidelines on Managing Allegations of Sexual Abuse of Children and of Sexual Assault of Adults by Clergy, Religious, Lay Employees, and Volunteers" (2003) states, "If at the conclusion of a Children's Aid Society or police investigation no charges are laid but the Advisory Committee deems the innocence of the accused remains in question, the Committee *can* direct the Delegate to investigate the allegations in order to make a comprehensive report to the Committee for recommendations to the Bishop" (emphasis added). It is recommended that the word *can* be replaced with the word *shall* in this sentence.
13. The Diocese should appoint a representative to monitor any criminal trials involving allegations of sexual assault/abuse against a clergy member or a diocesan employee or volunteer. Knowledge of the criminal proceedings will allow the Diocese to make appropriate decisions regarding how to deal with the accused individual (for example, whether the individual should be allowed to return to his or her post, whether an internal church investigation should be pursued, etc.), and in what ways the Diocese can support and provide assistance to the alleged victim(s). It will also ensure that if other victims are identified or other allegations emerge, the Diocese is able to respond properly and to assist the police, CAS, or other officials in their respective investigations.

14. In circumstances in which charges against a priest for alleged sexual assault/abuse are withdrawn or stayed for reasons other than the merits of the case—for example, the complainant is diagnosed with a terminal illness and is unable to testify—the Diocese should conduct a review of the incident to determine whether the priest constitutes a risk to young people such as parishioners and others with whom he has contact. The Diocese should impose appropriate measures if it concludes that the priest continues to pose a risk.
15. The Diocese should give serious consideration to amending its protocol(s) to provide that a priest who has been found guilty of sexual assault/abuse of a young person is prohibited from resuming ministerial duties. Evidence led at the Inquiry suggests that there is no current prohibition to prevent such resumption of duties. If it is ever decided that a priest who has been found guilty of sexual assault/abuse of a young person is to resume ministerial duties, it is recommended that strict restrictions be placed upon him.
16. The “Protocol for priests who are the subject matter of criminal proceedings or civil litigations” (1996) states that if certain conditions are present, a priest accused of an indictable offence will be placed on a leave of absence, and that after six months, this leave will become permanent. Thus, this provision could provide for the permanent dismissal of a priest who is later found not guilty. It is recommended that this protocol be amended to provide that if a priest is to be permanently removed from ministry, this removal will occur only after the conclusion of a criminal, civil, and/or church investigation.
17. The Diocese should require a priest who has allegedly assaulted/abused young persons who wishes to receive funding for a court appeal to submit a written request describing the reasons for the appeal. The Diocese should then review and assess the request and decide whether such funding should be provided.
18. If an individual who has been accused of sexual assault/abuse chooses to resign, the allegations should still be reported to the civil authorities and/or be fully investigated by the Diocese, and any alleged victims of the accused priest should be offered support and counselling.
19. The Diocese should create a policy that precludes the transfer of a clergy member who has committed an act of sexual misconduct to another diocese or religious order. Although evidence led at the Inquiry suggested that the Diocese would not permit the transfer of a clergy member who had committed an act of sexual misconduct to

another diocese or religious order, it also revealed that the Diocese has no written policy precluding such a transfer.

20. The Diocese should create a policy regarding communication with the media on sexual misconduct and that this policy include guidance regarding the leadership role the Bishop is to take regarding the recovery process, as was recommended in the 2005 Catholic Mutual Canada review of the Diocese's policies. This communications policy should provide direction on how information is to be shared with clergy members and employees and volunteers of the Diocese of Alexandria-Cornwall, other dioceses, other public institutions such as the school board, members of the parish where the accused individual served, and the public at large, following disclosure, charges, or convictions related to incidents of sexual assault/abuse of young people by a clergy member or diocesan employee or volunteer. These plans should balance the rights of the alleged victims to privacy with the broader public interest of encouraging other alleged victims to come forward and to receive support.

Treatment of Accused Priests

21. In seeking therapeutic options for priests who have committed or who are alleged to have committed sexual abuse of young people, the Diocese should use only qualified treatment centres that specialize in treating sexual disorders and that evaluate patient outcomes in a disinterested, professional manner.

Public Appeal and Apology

22. The Diocese should make a public appeal, urging any victims of clergy sexual assault/abuse to come forward. Given that there have been a number of confirmed cases of sexual assault/abuse by clergy in the Diocese of Alexandria-Cornwall, that there have been other allegations of sexual assault/abuse reported against diocesan clergy, and that sexual assault/abuse is known to be generally underreported, it is likely that there are still victims of clergy sexual abuse within the Diocese of Alexandria-Cornwall who have not yet come forward. Therefore, the Diocese should convey the message that any individuals who come forward with allegations of clergy sexual assault/abuse will be treated with respect, dignity, and compassion. The Diocese should offer counselling and support to any alleged victims of clergy sexual assault/abuse who come forward.

23. The Diocese should consider making a public apology to all confirmed victims of sexual assault/abuse by clergy in the Diocese of Alexandria-Cornwall and that this apology be delivered by the Bishop of the Diocese of Alexandria-Cornwall. Given that the *Apology Act*, which came into force in Ontario in April 2009, allows institutions to make apologies without admitting civil liability, it is also recommended that the Diocese consider extending such an apology to alleged victims who have reported allegations that have not been confirmed through a civil or Church process and to victims who have either opted not to come forward or who are yet to come forward. During the hearings, an apology from Bishop Paul-André Durocher to Lise Brisson, the mother of one of the victims of Father Gilles Deslauriers, was read by counsel. It was clear that this apology meant a great deal to Ms Brisson and provided a step toward healing for her. Such an apology could be a positive step toward healing for many of the victims and alleged victims of sexual assault/abuse by clergy in the Diocese of Alexandria-Cornwall.

Recommended Proposal to the Canadian Conference of Catholic Bishops

The Bishop of the Diocese of Alexandria-Cornwall is encouraged to propose the following measures to the Canadian Conference of Catholic Bishops.

24. A uniform national protocol for addressing allegations of sexual assault/abuse for dioceses in Canada should be developed. The national protocol should:
- a. be premised on the principles of transparency and openness discussed in *From Pain to Hope* and the 2005 *Report of the Special Task Force for the Review of From Pain to Hope*;
 - b. focus on prevention of sexual assault/abuse as well as care and counseling for victims allegedly assaulted/abused;
 - c. contain a provision prohibiting confidentiality clauses from being included in any settlements entered into between a diocese and an alleged victim of sexual assault/abuse;
 - d. contain guidance on the sharing of information regarding allegations of sexual assault/abuse between dioceses; and
 - e. contain guidance on either the prohibition of or the strict restrictions placed upon the transfer of a clergy member who has committed an act of sexual misconduct from one diocese to another.

Recommendations for the Diocese of Alexandria-Cornwall and Other Public Institutions

Child Protection Protocol, 2001

25. The Diocese should ask the current institutional partners in the Child Protection Protocol: A Coordinated Response in Eastern Ontario that was promulgated in 2001 to be included as a full party. The Diocese and its institutional partners shall meet as soon as practicable to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on the sharing of information between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

Institutional Response of the Children's Aid Society

History and Mandate of Children's Aid Societies

J.J. Kelso was a reporter at the *Globe* newspaper who wrote numerous stories about the plight of children on the streets of Toronto, especially the boys who delivered newspapers. In 1893, he was appointed Superintendent of Dependent and Neglected Children for Ontario. In this position, he created child protection legislation and travelled around Ontario speaking to citizens about establishing organizations to carry out the legislation. By 1907, there were about sixty Children's Aid Societies in Ontario; in 2006, there were fifty-three.

John Liston, an expert in the response of child welfare agencies to allegations of child sexual abuse, testified that, although the legal description of the mandate of Children's Aid Societies has changed over the years, their fundamental role has always been "investigation, counselling, guidance, care of children, adoption, supervision of children."

The mandate of a Children's Aid Society (CAS) was addressed in Ontario legislation in the 1960 *Child Welfare Act*. This *Act* stated:

A children's aid society may be established having among its objects the protection of children from neglect, the care and control of neglected children, assistance to unmarried parents, the placement of children in adoption, the supervision of children placed in adoption until an order of adoption is made and generally the discharge of the functions of a children's aid society under this Act, but no society shall act as such until it has been incorporated under *The Corporations Act* or a predecessor thereof and until it has been approved by the Lieutenant Governor in Council.¹

1. R.S.O. 1960, c. 53.

The 1970 *Child Welfare Act* stated:

- Every children's aid society shall be operated for the purposes of,
- (a) investigating allegations or evidence that children may be in need of protection;
 - (b) protecting children where necessary;
 - (c) providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
 - (d) providing care for children assigned or committed to its care under this or any other Act;
 - (e) supervising children assigned to its supervision under this or any other Act;
 - (f) placing children for adoption;
 - (g) assisting the parents of children born out of wedlock or likely to be born out of wedlock and their children born out of wedlock; and
 - (h) any other duties given to it by this or any other Act.²

Significant changes to the legislation came with the 1984 *Child and Family Services Act*, which came into force on November 1, 1985 and which defined a child as an individual under sixteen years of age, thereby limiting Children's Aid Societies to dealing with persons under the age of sixteen. Section 15(3) of the *Act* stated that the functions of a Children's Aid Society were to:

- (a) investigate allegations or evidence that children who are under the age of sixteen years or are in the society's care or under its supervision may be in need of protection;
- (b) protect, where necessary, children who are under the age of sixteen years or are in the society's care or under its supervision;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;

2. R.S.O. 1970, c. 64, s. 6(2).

- (f) place children for adoption under Part VII; and
- (g) perform any other duties given to it by this or any other Act.

This description of functions was unchanged in the 1990 *Child and Family Services Act*,³ which is the legislation currently in force.

The 1984 *Child and Family Services Act* also contained a list of purposes—the principles upon which Children's Aid Societies should operate. One of these principles was to recognize that the least restrictive or least disruptive course of action should be followed. According to John Liston, there was concern that this principle was being given excessive weight in the decision-making process, which was seen as potentially contributing to the CAS not intervening firmly enough in some situations. In 2000, the *Act* was amended to specify that the “best interests of the child” was the paramount purpose. The other purposes listed in the *Act* are now referred to as “additional purposes.” These purposes can be considered, provided they are consistent with the “best interests, protection and well-being of children.” Section 1 of the *Act* now states:

Paramount purpose

- (1) The paramount purpose of this Act is to promote the best interests, protection and well being of children.

Other purposes

- (2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well being of children, are:
 - 1. To recognize that while parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
 - 2. To recognize that the least disruptive course of action that is available and is appropriate in a particular case to help a child should be considered.
 - 3. To recognize that children's services should be provided in a manner that,
 - i. respects a child's need for continuity of care and for stable relationships within a family and cultural environment,

3. R.S.O. 1990, c. C.11.

- ii. takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children ...⁴

Organization of Children's Aid Societies

Every area of the province is served by a Children's Aid Society. Some areas, such as Toronto, have multiple Children's Aid Societies, some of which serve different religious and ethnic communities. While all Societies share the same legislation and standards, each CAS is an independent corporation with its own Board of Directors and volunteers to assist in its functioning. All Societies are funded completely by the Ministry of Community and Social Services.

The Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry

Cornwall is serviced by the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G). In addition to serving the United Counties, this CAS is also responsible for the Ontario section of the Mohawk territory of Akwesasne.

The CAS of SD&G has been in existence since at least 1908. It is a designated bilingual agency, and it functions twenty-four hours per day, 365 days of the year. In the mid-1960s, the CAS of SD&G had approximately fifteen staff members, consisting of an executive director, two supervisors, administrative and clerical staff, and two units of frontline workers. One of these units performed the protection duties of investigation, follow-up services, and looking after the needs of children in the temporary care of the CAS; the second unit looked after foster care, adoption, and the needs of children in the permanent care of the CAS. In 2006, the CAS of SD&G had a budget of \$20 million and employed 115 staff members. In March 2006, it had 291 active investigations, 368 children in its care, and 391 cases assigned to family services staff (cases where there had already been a determination that a child needed protection).

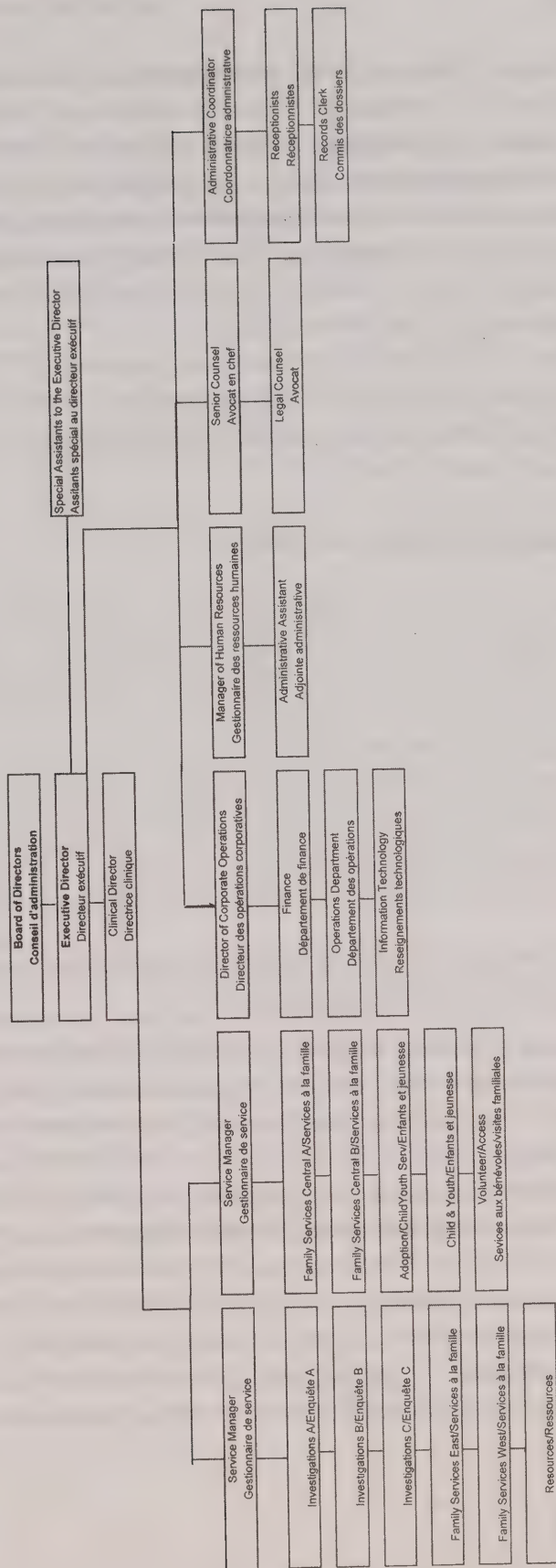
The organizational chart for the CAS of SD&G follows, showing the service side of the CAS on the left and the administrative side on the right:

4. In 2006, the following subclauses were added:

- iii. provides early assessment, planning and decision-making to achieve permanent plans for children in accordance with their best interests, and
- iv. includes the participation of a child, his or her parents and relatives and the members of the child's extended family and community, where appropriate.



The Children's Aid Society
La Société de l'aide à l'enfance
of the United Countries of / des comtés unis de Stormont, Dundas & Glengarry
150, chemin Boundary Road



The Board of Directors is the governing body of the Society. Next in the hierarchy is the executive director, followed by the clinical director, and, on the service side, two service managers, who are responsible for blocks of teams. There are three investigation teams, which each comprise about six workers. Family Services carries cases in which there has been a determination that children are in need of protection and ongoing work is needed with the family. The Adoption Service deals with adoptions, and the Child and Youth Service deals with children who are permanent wards of the CAS.

The CAS of SD&G's current mission statement is, "The Children's Aid Society of Stormont, Dundas and Glengarry protects children from abuse and neglect, while supporting the safe and healthy development of children in their families and community."

Funding of Children's Aid Societies

Historically, Children's Aid Societies were community based and operated independently of each other. Initially, they relied on donations from individuals and private bodies such as churches. Over time, they applied to city and county councils for funding. Eventually, grants from the province and municipalities became more fixed and were based on various formulas. By the mid-1960s, the province was contributing 60 percent of the funding, and municipalities were contributing 40 percent. Over the years, the proportion of funding assumed by the province gradually increased until, in or around 1998–2000, the Ontario provincial government assumed 100 percent of the funding of all Children's Aid Societies.

The Relationship Between Children's Aid Societies and the Ministry of Community and Social Services

In the early 1900s, Children's Aid Societies were non-profit, charitable, non-government organizations, regulated under general legislation governing charities. They were granted basic legislative powers related to the protection of children.

The first legislation to govern the protection of children and the organization, membership, and management of Children's Aid Societies in Ontario was the 1927 *Children's Protection Act*.⁵ This *Act* authorized the provincial government to approve the formation of Children's Aid Societies and to advise and instruct them regarding how their duties were to be performed.

Amendments to the *Children's Protection Act* in 1931, 1932, 1934, 1942, and 1949 granted the provincial government the authority to make regulations regarding:

5. R.S.O. 1927, c. 279.

- the mode of incorporation of a Society and the fees, if any, to be paid upon incorporation;
- a standard form of constitution and by-laws, providing for provisions for the proper care, treatment, and inspection of all children of which it was the legal guardian, or who were in its charge;
- the appointment and duties of a local Society superintendent;
- the Society's duties and scope; and
- the required qualifications of members of Society staff.

In 1954, the *Child Welfare Act* replaced the *Children's Protection Act*. The two *Acts* were similar in regard to the establishment and management of Children's Aid Societies. However, the *Child Welfare Act* provided for the appointment of a Director of Child Welfare, who was to advise, inspect, and supervise Societies.

In the late 1950s and through the 1960s, the government became more involved with the functioning of Children's Aid Societies. Societies continued to provide direct service to parents and children while the Ministry of Community and Social Services provided grants and supervisory, advisory, and consultative services to assist the Societies. During this period, there was movement away from engaging volunteers and towards the hiring of professional staff. Shortly after a new *Child Welfare Act* was passed in 1965, child welfare supervisors were hired. All of the child welfare supervisors had Masters degrees in Social Work and experience working in Children's Aid Societies. These supervisors visited Societies to assess the quality of service they provided. They based their assessments largely on their own personal experiences rather than specific standards or guidelines.

In the 1970s, the province started introducing standards with respect to abuse. In the late 1970s, the Ministry of Community and Social Services decentralized and established twelve area offices. Ministry program supervisors were assigned to work with specific Societies, and the frequency of contact between the Ministry and Societies was greatly increased.

The 1984 *Children and Family Services Act*⁶ set out that a Ministry director is required to, among other things "advise and supervise societies," "inspect or direct and supervise the inspection of the operation and records of societies," "inspect or direct and supervise the inspection of places in which children in the care of societies are placed," and "ensure that societies provide the standard of services and follow the procedures and practices" required under the *Act*.

When the Ministry began providing all of the funding for Children's Aid Societies, funding became based on volume of cases. The province also started

6. S.O. 1984, c. 55, s. 17.

to specify who was eligible for the service it was funding and began regularly auditing eligibility.

Unlike in provinces that operate child protection agencies through government ministries, Children's Aid Societies in Ontario are governed by community boards. Thus, the Societies still retain some autonomy from the provincial government. The responsibilities of CAS Boards generally include providing overall policy and administrative direction for the organization, approving and monitoring implementation of the policies of the Society to ensure that legislation and regulations are enforced, reviewing and approving budgets, and appointing a local director for the administration and enforcement of the child protection legislation and regulations in the area in which the Society has jurisdiction. According to John Liston, these Boards continue to have a significant responsibility because children in the care of Ontario Children's Aid Societies are wards of the local Society, not wards of the provincial government.

The Ministry of Community and Social Services currently has nine regional offices in Ontario. Within each office there are program supervisors,⁷ who serve as the primary contact between Societies and the Ministry and have the authority to enter Societies and inspect the facilities, the services provided, the books of account, and records relating to the services.

The Ministry has mandated the procedures, practices, and standards for child protection cases, including the use of the Risk Assessment Model for Child Protection in Ontario (ORAM) and the Child Abuse Register. ORAM, which will be discussed in more detail in the next section, is an assessment tool that guides CAS workers in how to manage child protection cases. The Child Abuse Register is a confidential register operated by the Ministry that contains the names of persons who have been verified by a CAS to have abused children within the meaning of the *Child and Family Services Act*. The Register is used by all Societies as part of their investigations of subsequent abuse allegations.

The Ministry of Community and Social Services requires Children's Aid Societies to report all serious occurrences involving children, such as deaths or serious injuries of children in care or suspicions of abuse or mistreatment of children in care, to a Ministry regional office. The report must also include the steps the Society is taking to deal with the situation or, if possible, to avoid a recurrence of the incident. The Ministry follows up to ensure that the responsible authority within the Society has taken the steps outlined in the initial report.

7. Their authority is granted by the *Child and Family Services Act*, R.S.O., 1990, c. C.11, s. 6.

Section 34 of the *Children and Family Services Act* states that the Minister may establish residential placement advisory committees, which are to review certain residential care arrangements and make recommendations. In addition, pursuant to section 66 of the *Child and Family Services Act*, a Ministry director conducts a yearly review of the status of Crown wards who have been Crown wards for at least two years.

The Relationship Between Children's Aid Societies and the Ontario Association of Children's Aid Societies

The Ontario Association of Children's Aid Societies (OACAS) has been in operation since 1912. It represents Children's Aid Societies and can liaise with government about their concerns, including concerns regarding government legislation. Membership in this association is voluntary. As of 2006, fifty-two of the fifty-three Children's Aid Societies of Ontario, including the CAS of SD&G, were members.

The OACAS is involved in research and special projects and assisting in government policy development. It also administers an Accreditation Program, which a number of Children's Aid Societies have participated in since the mid-1990s. The OACAS is also responsible for the delivery of child protection training, which is funded by the Ministry of Children and Youth Services.

The next section will provide a summary of the evolution of policies, protocols, and procedures for the CAS of SD&G and will provide comments on the duty to report, the Child Abuse Register, and the Dawson Review. Following the policies section, I will examine the response of the CAS of SD&G to reported allegations of sexual abuse of young people in the Cornwall area. I will comment on the investigation of matters brought to the attention of the CAS of SD&G involving young people in the community who fell within its mandate, and complaints made by those placed in foster homes and group homes that were supervised by the Society. I will look at allegations made against caseworkers, foster parents, and staff, or persons otherwise associated with the CAS of SD&G. I will make recommendations on issues such as the duty to report to the CAS, the training of personnel, the screening of staff and foster parents, the reporting of allegations to police and employers for investigation, the provision of counselling for victims, and the review of policies and protocols. I will comment on the importance of communication, the sharing of information, the conducting of joint investigations with the Cornwall Community Police Service and the Ontario Provincial Police, and the interactions of the CAS of SD&G with other public institutions.

The Development of Protocols and the Relationships Between the Children's Aid Society of Stormont, Dundas & Glengarry and Other Agencies and Organizations

The Development of Protocols With Other Agencies

The Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) has collaborated with a variety of agencies and organizations to develop protocols and policies related to child sexual abuse. The development of the first child sexual abuse protocol involving the CAS of SD&G began in 1985. A protocol covering Stormont, Dundas, and Glengarry, "Child Sexual Abuse Protocol: A Co-ordinated Response in the United Counties of Stormont, Dundas and Glengarry," was finalized in 1992. Development of this protocol involved several agencies, including the local Ontario Provincial Police (OPP), the Cornwall Community Police Service (CPS), local school boards, and public health and health care organizations.

In July 2001, the "Child Protection Protocol: A Coordinated Response in Eastern Ontario" was finalized. It covered Eastern Ontario, including four area Children's Aid Societies, some health care services and agencies, as well as several police forces in the area.⁸ The scope of this protocol was broader than the 1992 protocol in that it included all forms of child maltreatment. It also included a brief reference to "historical abuse."

The CAS of SD&G also has a collaboration agreement with women's shelters in the area, largely dealing with domestic violence but also containing information on the duty to report child abuse and the definition of a "child in need of protection."

In 1995, the CAS of SD&G assisted the Diocese of Alexandria-Cornwall in drafting its guidelines, "Diocesan Guidelines on Sexual Abuse by Priests, Deacons, Seminarians and Pastoral Assistants." Subsequent to the development of these guidelines, the CAS of SD&G provided a training session to the Diocese in October 1995. The CAS of SD&G has continued to be involved with the Diocese to provide advice on development of Diocese policy in the area of sexual abuse.

Bill Carriere, who held several positions with the CAS of SD&G over the course of his thirty-three-year career with the Society, testified that, in 2006, the CAS of SD&G was meeting with local OPP representatives and the CPS to update local child protection protocols, noting that updates were needed to deal with risks associated with the Internet. In addition, the Society is working with the Cornwall Community Hospital on a protocol concerning the local medical

8. The police forces included OPP Eastern Region, the Cornwall Police Service, and the Brockville, Carleton Place, Gananoque, Perth, and Prescott police forces.

examination of child victims of abuse, so that such children need not be transported to Ottawa.

There are no policies, standards, or guidelines at the CAS of SD&G regarding the disclosure of allegations of child sexual abuse to an alleged abuser's employer with the exception of cases involving individuals employed in a school or child-care setting. This requirement was included in the 2001 "Child Protection Protocol: A Coordinated Response in Eastern Ontario." When Richard Abell, who was the executive director of the CAS of SD&G from 1990 until 2007, testified, he said that he was not aware of any legislation or regulations requiring the CAS to notify an alleged abuser's employer of allegations of abuse.

Policies on Making Claims for Compensation

In 1984, Children's Aid Societies across Ontario received a memorandum from the Ministry of Community and Social Services pointing out that they can make civil claims for compensation for abuse or apply to the Criminal Injuries Compensation Board. Recently, the CAS of SD&G has implemented a process to look at available compensation. Initially, the CAS of SD&G did not include Crown wards who may have been abused in care in this process, but I am informed that this policy has changed and applications for compensation to victims of verified abuse will be made in every case. This action is appropriate, and I commend the CAS of SD&G for this initiative.

Intake and Investigation Procedures for Protection Services

Protection Services is divided into three areas: intake, investigations, and family services. As explained by Bill Carriere, intake is the "gate into the Agency" and is the point where the agency determines whether a referral fits within its mandate. Formal guidelines with respect to intake of child abuse cases were introduced in 1979 with a document provided by the Ministry of Community and Social Services, "The Standards and Guidelines for the Management of Child Abuse Cases under the Child Welfare Act (1978) by the Children's Aid Societies." According to Mr. Carriere, these standards and guidelines did not provide as much information as the current standards about what should be included in an intake referral. They did not, for example, cover reports of historical abuse.

In 1992, the Ministry of Community and Social Services eliminated the 1979 standards and guidelines and created a set of mandatory standards. The introduction of these standards meant that there was some standardization of the intake process among all Children's Aid Societies across Ontario. Unlike the previous standards and guidelines, the 1992 standards did refer to historical abuse, indicating that Children's Aid Societies should encourage historical abuse

victims over sixteen years of age to report the abuse to police and to avail themselves of community resources.⁹ In addition to Ministry guidelines and standards, the CAS of SD&G adopted, with some modification, the Risk Factor Matrix from Washington State. This risk assessment tool was used in the 1980s and 1990s until the introduction of the Risk Assessment Model for Child Protection in Ontario (ORAM) in 1998.

ORAM provided detailed standards and assessment tools for the investigation of cases of abuse of children. It has three major components: an eligibility spectrum, a safety assessment, and a risk assessment. The eligibility spectrum allows intake staff to assess the referrals received and determine whether they are eligible for agency involvement. It also assists in determining the level of severity of referrals and the required response time. For severe cases, intervention could be within twelve hours; in moderately severe cases, the standard at the CAS of SD&G is seven days. It also gave greater prominence to historical cases of child sexual abuse in that it had a category for historical abuse. The safety assessment focuses on immediate safety and may be used to inform a decision to apprehend a child. The third component is a risk assessment instrument, which is used to predict risk of future harm and to support decisions regarding the need for ongoing services or appropriate future actions. This three-part model involved eleven risk decision points for a CAS in cases referred to it.

From time to time, various aspects of the risk assessment tools have been modified; for example, the eligibility spectrum was modified and augmented in 2000 and more decision points were added. The most significant development was that the 2000 ORAM made the standards applicable to all forms of maltreatment of children, not just abuse cases.

The second area of Protection Services is investigations. If a referral is assigned for investigation, depending on the severity of the case, the staff of the CAS of SD&G may see all the children in the family under the age of sixteen within twelve hours. A worker also meets with family members, witnesses, or others who may have information that would help determine if a child is in need of protection. The structure afforded by the Ontario Risk Assessment Model is considered useful in making decisions at various points in an investigation. Currently, the CAS of SD&G has a two-part roster system for assigning cases at the investigation stage. There is an Emergency Response System, which applies if an immediate response is needed within twelve hours; these cases would go to on-call workers. The second-stage roster consists of those cases that do not require immediate assignment. Those cases are assigned to an investigator within seven

9. Carol A. Stalker et al., "Policies and Practices of Child Welfare Agencies in Response to Complaints of Child Sexual Abuse 1960–2006," Phase 1 research, filed at the Inquiry.

days. In addition to the degree of urgency, there are other considerations in assigning staff, such as gender, worker expertise, prior contact with a family, and language capacity. Bill Carriere testified that, increasingly, two workers are being assigned to an investigation.

In all investigations, there is a standard question in the safety assessment that requires a worker to explore with any young person who is under the age of sixteen whether he or she is at risk of sexual abuse.

In the Cornwall area, management staff of the CAS of SD&G noted that it has a working relationship with the Children's Treatment Centre, which provides counselling to children who have suffered sexual abuse. The centre, which opened in 1996, was a result of an initiative of Angelo Towndale, who worked for the CAS of SD&G for thirty years. Mr. Towndale testified that approximately 40 percent of the cases that the Centre receives are referred from the CAS. From 1986 to the early 1990s, the CAS of SD&G offered its own specialized sexual abuse treatment program, called the Family Sexual Abuse Treatment Program, but it was discontinued in the mid-1990s due to budget pressures and a reduced caseload of sexual abuse cases.

The third area of Protection Services is family services. If a decision is made that a child is in need of protection, the file is moved to the family service unit. This unit works with the family to reduce protection concerns to the point that the family can function on its own. If such work is not successful, the Society may seek a court order and the children may become Crown wards or permanent wards of the CAS of SD&G. The file is then transferred to the child and youth team.

If an allegation of historical abuse is received, the CAS of SD&G encourages the person involved to report the incident to the police, and the person may be directed to community victim-assistance services. However, the CAS of SD&G initiates an investigation only if there is an allegation or evidence that a child under the age of sixteen is at risk or may have been abused. Unless a young person is already subject to a child protection order, a Children's Aid Society takes the position that it cannot investigate allegations of abuse regarding sixteen- or seventeen-year-olds.

Screening and Supervision of Employees

Since April 1989, all staff recruited by the CAS of SD&G are required to have a current police record check. In addition, applicants must submit two or, preferably, three references, which are checked before employment is confirmed. There are two tools, however, that Ontario Children's Aid Societies are not permitted to use to screen potential employees: the Child Abuse Register and the provincial Child Protection Fast Track Information System. The Fast

Track system is a database containing names of individuals who have had any contact with an Ontario CAS. The Child Abuse Register, which will be discussed in greater detail later in this chapter, comprises confidential records of the names of persons who have been verified by a CAS as having abused children within the meaning of the *Child and Family Services Act*. In some provinces, such as Nova Scotia and Manitoba, child welfare organizations are able to use the equivalent of the Ontario registries to screen potential child welfare workers. Bill Carriere testified that access to the Ministry Fast Track System would permit the agency to obtain information about a prospective employee's past involvement with an Ontario CAS. In this way, a CAS could avoid hiring individuals who could be attracted to the position because of the access to vulnerable children.

I agree that access to the Fast Track System and the Child Abuse Register for checks on potential CAS employees is a needed change for Ontario and that it would provide an extra mechanism to protect children. All Children's Aid Societies are in a particular position of trust with respect to children, and every safeguard should be available to ensure that those working in Children's Aid Societies are not themselves a risk to children. As other Canadian provinces already have this capacity in place, the change is overdue.

Staff at the CAS of SD&G are usually required to have specialized educational qualifications. For example, child and youth care workers have community college diplomas in social services or child and youth care. Efforts are being made to recruit staff with a Bachelors or Masters degree in Social Work, and considerable senior management effort goes into extensive interview and role-playing processes to determine theoretical knowledge and practical experience.

Newly hired staff are on probationary employment for at least six months prior to being confirmed as permanent employees. Less experienced workers may have a nine-month probationary term. All workers receive regular supervision through weekly or bi-weekly meetings with their supervisor or manager. Supervision notes are produced for these sessions. In addition, units or teams have regular meetings, the minutes of which are maintained. Managers also use tracking forms to assist in overseeing work, and frontline staff also track matters such as documentation completion, client contact, and supervision of cases. All documentation must be reviewed and approved by managers. There is a process of annual performance review.

Starting in 2001, senior management has conducted regular file audits. Audit results are shared with staff, the management team, and the governing Board of Directors of the Society. In addition, the Ministry of Community and Social Services performs an annual review of Crown wards. And, since November 2004, the CAS of SD&G has had a Quality Assurance Committee.

Training of CAS of SD&G Employees

Newly hired staff are required to complete a New Worker Training Program, which includes sections on child sexual abuse. This training program extends over three or four months, covers fundamental aspects of child protection, and is funded by the Ontario government. Effective June 2005, prior to being assigned a child sexual abuse case, a worker must complete training on forensic interviewing. The CAS of SD&G has recently provided internal training on forensic interviewing for management staff. In addition, the CAS of SD&G has a statement validity analysis tool for staff and provides training on this tool on a discretionary basis.

The CAS of SD&G has a Staff Training Committee, which develops an annual training calendar, including written materials and major training events for front-line staff, foster parents, and community partners. It continues to consider relevant training topics, such as training by a psychologist on how to manage sexualized behaviours by children in a foster home setting.

In the past, the CAS of SD&G had access to excellent joint police–CAS training offered by the Institute for the Prevention of Child Abuse (IPCA) and by the Ontario Association of Children's Aid Societies (OACAS). This training afforded the opportunity for child welfare workers to be trained with police officers, which also increased understanding of the interactions between police and child welfare workers as partners in protecting children and built useful networks. As well, the training involved mock interviews with children, a particularly practical learning component.

This valuable training ceased to be available in 1995, but management staff of the CAS of SD&G indicated that they made every effort to have their staff enrolled when it was available. In my view, it is imperative that joint training of a calibre provided by IPCA in the past be re-instituted in Ontario and be widely available across the province. The program should incorporate training on reports of historical sexual abuse.

Procedures When Complaints Are Made About the CAS

The CAS of SD&G has complaints procedures in place and a pamphlet to outline this procedure. If clients believe that the CAS is treating them unjustly, there is an internal complaint process available to them. If dissatisfied with the CAS response, they can take their complaint to the Child and Family Services Review Board.¹⁰

10. The authority for the Board to receive complaints is found in the *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 68.1.

Policies and procedures were formally introduced by the CAS of SD&G in 2001 to address allegations of child maltreatment by staff or management. Even prior to that, there was an established practice to call on neighbouring Children's Aid Societies to investigate internal allegations of child abuse. When such an allegation is made, all relevant material is provided to the CAS that is asked to investigate, and the CAS of SD&G takes a "hands off" approach to the case.

In the late 1970s and early 1980s, if the CAS of SD&G received a complaint regarding a foster home or group home, it would notify the police and conduct a joint investigation. If the alleged perpetrator was in the home, children were removed and statements recorded and shared with police. Results of the investigation were rarely shared with the foster home. While this practice may have been in place during that period of time, it was not always followed. I examine specific complaints in later sections of this chapter.

Since 1992, the practice has been that, if there is an allegation of abuse in a foster home, the CAS of SD&G will convene a planning meeting, notify the police, and develop a safety plan for the victim and other children in the home. The foster home is notified of the review within twenty-four hours. Interviews are scheduled with the family and an investigator designated. Following an investigation, there is a disposition conference, and a summary report, with conclusions and recommendations made by the investigators and confirmed by management, which is provided to the foster home.

Record Keeping and Access to Records

Case notes are produced for all activities associated with a case. The case notes are, in turn, the basis for the production of other required documentation, including documentation required by provincial legislation, regulations, standards, and guidelines. For example, in 2000, the Ministry of Community and Social Services introduced a child protection standard on record keeping. It provided that contemporaneous notes of any contact related to a child and families should be kept by child protection workers and any child protection summary recordings should be signed and dated by the child protection worker and approved, signed, and dated by the child protection supervisor.

Over time, a variety of recording formats have been used for case notes and other documentation. In 1998, the Intake and Family Recording System (IFRS) came into effect. It is a provincial recording system consisting of a series of modules that workers complete. The IFRS ensures greater consistency across the province; on the other hand, it has also been criticized as being too compliance driven and for not providing a good case history.

Some documents must be completed within specified times, such as the safety assessment, which is required to be completed within twenty-four hours of contact. Other required documents include a document outlining whether an allegation is substantiated and if any other allegations have emerged during the investigation. Disposition reports must reflect whether the child is in need of protection and any determination made on whether to close the file. The comprehensive assessment report looks at the details of risk and factors such as available support systems. If the case remains open, this latter document also leads to a plan of service, often involving other community partners and clients. Ninety days after the initial plan of service is developed, there is another eligibility assessment to determine if CAS involvement is still warranted. There is an ongoing process of reassessment of open files and plans of service, with updating every six months.

Records are retained on a permanent basis from the inception of the CAS of SD&G. There is no policy related to record destruction. Some earlier records were microfiched because of the disintegration of old paper records. Since 1985, foster parents have been trained on maintaining notes for records.

There are no across-the-board standards for the disclosure of case records to former wards or those subject to protection orders. Neither are there standards regarding counselling or other supports that people may need when they see their records. Bill Carriere testified that a policy on record requests by adults was established within the past decade by the CAS of SD&G. The agency still has a significant backlog in meeting requests.

The government of Ontario should develop standards and provide guidance to all Children's Aid Societies on disclosure of records and the type of records those in care should have access to. This process should include review of provisions of Part VIII of the *Child and Family Services Act*,¹¹ which deals with confidentiality and access to records. Some of these provisions are unproclaimed. Knowledge of one's history is fundamental to one's development as an adult and, in some cases, is needed to support legitimate civil litigation or applications to the Criminal Injuries Compensation Board. Ian MacLean of the CAS of SD&G had some useful suggestions for the kind of records that should be disclosed, such as a full school and medical history, school reports, certificates earned, recreational activities, and churches attended. I will discuss the issue of records further in examining specific cases of records requests made by individuals who were in the care of the CAS SD&G as children.

11. *Ibid.*

The CAS of SD&G keeps statistical records about child sexual abuse cases, which contain a lot of useful information including:

- the number of referrals received;
- the number of cases referred that were investigated; and
- whether a file was new or was re-opened for investigation.

Bill Carriere testified that a high number of cases being re-opened could raise concerns about the service provided previously.

Statistics also provide records on whether the CAS of SD&G is meeting its requirements to contact children within twelve hours, the level of police involvement, the number of cases in which abuse is verified by the Society, and the number of cases where a report was made to the Child Abuse Register.

The maintenance of publicly available statistical information is useful for community partners and the public to better understand the incidence of and response to abuse in their community. I would urge the CAS of SD&G to continue to develop statistical reporting and analysis as an additional tool to understand past activities and improve future response.

Foster Homes

Recruitment of Foster Parents

The Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) has never had enough foster homes to meet the needs of children entrusted to its care.¹²

From the 1950s to the 1970s, the Homefinding Department at the Society was staffed by a single worker. In 1980, the Society hired a second worker for this department. Workers in the Homefinding Department were responsible for responding to inquiries about fostering and for performing assessments of foster parents and homes, as well as some recruitment activities. However, prior to 2000, the Society depended largely on word of mouth to assist in recruiting foster parents. Other strategies included advertisements run in the newspaper and newspaper articles addressing the need for foster homes.

12. According to Ian MacLean's statistics and trends analysis, as of December 2005, 74.7 percent of the children in the care of the CAS of SD&G were placed in family settings. In September 2005, the statistics indicate that only 61.4 percent of CAS of SD&G children in care were being cared for by the foster care system, while 91 children (26 percent) were being cared for in outside paid group or foster resources, 60 (17 percent) of which were outside the jurisdiction of the CAS of SD&G. In 2001, the agency's goal was to have 200 foster homes. This goal remained as of 2006. This number of approved foster homes would allow for clinically based placement decisions.

In 2000, the CAS of SD&G established a Recruitment Committee. This committee comprises foster parents, staff, and representatives from the community and is responsible for assessing the Society's need for foster parents and for producing an annual recruitment plan and budget.

Screening of Foster Homes

Prior to 1985

Prior to 1985, few policies or regulations governed the recruitment and screening of foster parents. A November 1976 memo from the Ministry of Community and Social Services to all Children's Aid Societies, entitled "Screening of Individuals and Families for the Care of Children," stated:

There is a general need for each Society to review it's [sic] policies and procedures used to screen individuals entrusted with supervision or care of children. For our part, we are presently exploring with the Ministry of the Solicitor-General the whole question of a search of criminal records for applicants for fostering, adoptions or volunteer services. As soon as these discussions are concluded, we will be writing to you again. Meanwhile we recommend that the question of a criminal record should be explored in the screening interview. If any convictions are acknowledged, their relevance and implications for the role of caretaker of children should be carefully assessed.

The minutes from a February 1977 CAS of SD&G staff meeting stated:

[a] recent Memo from Branch suggested obtaining of criminal records on persons responsible for care of CAS wards. Since then Mr. Ken MacDonald has met with people from the Office of the Attorney General and the Police Association who have agreed to refuse to supply such information to CAS. Therefore, request in departmental memorandum cancelled.

There were no police checks performed on prospective foster parents until around 1984.

In 1979, the CAS of SD&G released a foster home policy that provided the following instructions, which are an extract from the *Child Welfare Act*, 1965, as amended, for foster home workers:

- a) The Society shall, within thirty days after receiving an application to board a child, begin an investigation of the application.

- b) The Society shall, interview separately and jointly the male and female applicants and assess the consequences for other children in the home of the applicants of granting the application.
- c) The Society shall, record description of the home and an assessment of its competence and suitability as a foster home; and,
- d) re-assess each foster home at intervals of not less than six months and record the re-assessment.
- e) Prospective foster parents shall provide names and addresses of persons who can give character references such as: clergyman, doctor, 3 persons other than doctor or minister who have known applicants intimately at least 3 years, and one relative. However, if applicants do not attend church of their faith, they may give the name of another professional in place of the clergyman.
- f) Applicants should be required to show evidence of a thorough medical examination to assess physical and mental health.

Ian MacLean, former director of Residential Services at the CAS of SD&G, testified that, although the provisions of the *Act* were seen as good practice, no provisions were considered mandatory until 1985, when the licensing of foster homes and corresponding standards and guidelines were introduced.

Prior to 1985, inquiries regarding fostering were followed up with a phone call or visit. The next step was the completion of an application to foster. Three references were requested, from a priest or minister, friend, neighbour, or family member. In some cases, parents of applicants were used as references. Ian MacLean testified that using such references was not considered unusual at the time and is still done today. Each prospective foster parent would also undergo a medical examination.

The next step was an internal cross-reference check of applicants. Before the system was computerized in the 1990s, this check was completed using the CAS of SD&G's index-card system. This check would reveal if there were a protection file related to the foster parents. However, the cross-reference alerted the Society only to CAS-related issues within families, and, as there were no police checks performed until around 1984, there was no way of checking on issues not involving the CAS.

After these steps were taken, a home visit and an interview with the applicant(s) were completed. The home study was short—the form was about two pages in length—and had no structure. The record would describe the physical aspects of the home, state that the marriage licence had been examined, provide a summary of the references and medical reports, and provide a brief description of the parents and their children (if applicable). The worker would briefly interview

the father and mother separately and then together. Ian MacLean testified that, starting in the 1970s and until 1985, “[t]he visit to the home was to see that there was a bed and that there was sort of food and water on the table, and the basics of life,” but there was no assessment of safety. He agreed that these visits “could be seen as superficial.”

After 1985

The *Child and Family Services Act*, 1984, which came into force in 1985, required the CAS to apply for a licence to operate its foster parent system and introduced more stringent standards regarding foster care.¹³ In 1985, the CAS of SD&G developed a foster care policy that required police checks of applicants, pre-service training, interviews with birth children, separate interviews with each applicant, an interview with the couple together, and a health and safety check of the applicants’ home.

In 1990, Joyce Cohen, a professor at the University of Toronto School of Social Work, was hired by the CAS of SD&G to provide training in conducting home studies. She introduced the McMaster model, which provided guidelines designed to examine the inner workings of the family. The guidelines were meant to determine factors such as who made the decisions in the family and the style of communication and discipline in the home. The McMaster model was used by the CAS of SD&G until 2006, when the Parent Resources for Information, Development, and Education (PRIDE) model (discussed further below) was introduced.

In 2005, the CAS of SD&G introduced a new foster care policy that stated that all individuals who inquire about fostering will be contacted and invited to attend an information session. This session provides an overview of the Society and its services and an opportunity to discuss questions and concerns with a CAS resource worker. The policy also states that arrangements will be made for an approved foster parent to contact potential applicants to provide a realistic perspective on fostering.

The 2005 foster care policy states that applicants who have a record of verified or substantiated child abuse and neglect will not be approved as foster parents. It also states that the CAS may reject any applicants if there is a suspicion that they are guilty of neglect or abuse.

The policy requires that a police reference check be completed on all adults in a prospective foster family. Ian MacLean explained that the criminal record check with the Cornwall Community Police and the Ontario Provincial Police is

13. See section 110(1) of O. Reg. 550/85.

much broader than in the past. The intent is to detect not just criminal charges but any police involvement that an individual has had. There is a release that allows the police to provide information regarding any history of sexual abuse. Ian MacLean testified that RCMP fingerprinting is now also a requirement.

The Child Protection Fast Track Information System (Fast Track) is a province-wide database of CAS client activity that first came into operation around 1998. Through Fast Track, a CAS can quickly determine if a particular client has a history of child protection involvement. However, a CAS is not permitted to use Fast Track or the Child Abuse Register in the screening of foster parent applicants.

In 2005, the Structured Analysis Family Evaluation (SAFE) was approved by the Ministry of Community and Social Services to be used during home assessments for foster families. It is designed to ensure uniformity of home assessments, prevent worker bias, and detect psycho-social indicators of risk. It includes standardized questionnaires intended to assess the competency of families to care for children. It requires background checks to be conducted on all individuals over eighteen years old that live in the foster home and requires that references be obtained from each adult child of an applicant family.

Training and Support for Foster Parents

Prior to 1985, the CAS of SD&G offered no training for foster parent applicants and practically no training to active foster parents.

In the late 1970s and early 1980s, Ian MacLean met with eight or nine families involved in parent-model group homes and specialized foster parent groups for a full day every month. These days included training and a support session. Parent-model group homes are discussed in further detail later in this section. Specialized foster homes are homes that care for children with special needs.

From 1982 to 2001, the CAS of SD&G hosted the Community Family Care Program. This program shared responsibility with Laurencrest, a group home for adolescent males, for providing open custody residential services to Phase I young offenders. This program consisted of six community homes, one full-time counsellor, and a part-time supervisor. Staff were seconded from the CAS of SD&G. The program carried its own licence, which was separate from the CAS of SD&G foster parent licence. Originally, the program had a separate budget from that of the CAS of SD&G, but the program grew larger than the approved funding so, from the late-1980s, it was subsidized by the Society. The program continued with its original mandate but was also used by the CAS of SD&G as an alternative to group home placements outside the jurisdiction. Participants in this program received bi-weekly in-service training and were considered highly trained therapeutic foster parents. The program was terminated in 2001 due to lack of funding.

From 1985 to 2004, a mandatory pre-service training program existed for those in the applicant stage. This program initially started with nine sessions of three hours each but was later divided into six sessions of pre-service training and six sessions of core training. Applicants who successfully completed the pre-training moved on to the core training program before they were officially approved.

The pre-service training topics included:

- an introduction to the Society
- the child's family
- loss and separation
- discipline and behaviour management
- placement
- policies and procedures

The core training topics included:

- the effects of physical abuse
- failure to thrive
- child sexual abuse
- child development
- communication with children
- child management
- enhancing the partnership and plans of care

The pre-service and core training periodically included in-service training and joint training with staff.

In 2001, the Child and Youth Care Worker Program was introduced. Child and youth care workers (CYCWs) are not child protection workers and do not carry a caseload. CYCWs have diplomas in social services or child and youth care. Their functions are to assess the skills of the foster family and the needs of the child, develop programs to address the child's needs using the skills of the foster parent, model the desired interaction with the child for the foster parent, and be available to the foster parent for consultation and intervention after hours and on weekends and holidays. The CAS of SD&G originally hired four CYCWs. In 2004, with the development of the Foster Success Program, discussed later in this chapter, four more CYCWs were hired.

A Joint Education Committee comprising foster parents and CAS staff has developed an annual training calendar since 2001. The calendar lists both mandatory training sessions and optional sessions. Foster parents earn credits for

attendance at training sessions, and these credits affect the daily rate foster parents receive for fostering.

In 2004, the CAS of SD&G began to implement the Parent Resources for Information, Development, and Education (PRIDE) initiative, a program approved and required by the Ministry of Community and Social Services for the recruitment, development, support, and retention of foster parents.¹⁴ By December 2005, the Society had its entire resource staff, who are the staff members responsible for foster homes, trained in the program's practices. The new practices were implemented by the Society in January 2006 with a new group of foster parent applicants.

PRIDE provides processes, tools, and a training curriculum designed to achieve the goals of meeting children's developmental, protective, cultural, and permanency needs and strengthening the quality of foster care.

The PRIDE program has established the following six essential competency categories:

1. protecting and nurturing children
2. meeting children's developmental needs and addressing developmental delays
3. supporting relationships between children and their families
4. connecting children to safe, nurturing relationships intended to last a lifetime
5. participating as a member of a professional team
6. reinforcing a child's heritage and cultural identity.

PRIDE includes ten mandatory pre-service training sessions for all applicants. This training is designed to allow applicants to gain insight into the needs of children and their own abilities to parent. PRIDE also provides core training. PRIDE training is delivered by Society personnel who have undergone training and certification by the Ontario Association of Children's Aid Societies. The implementation and ongoing evaluation of PRIDE is the responsibility of the OACAS.

The CAS of SD&G organized an internal training session for staff and foster parents on dealing with children's sexual behaviours in a foster home setting, which was scheduled to run in spring 2006.

14. PRIDE was originally developed in 1993 by the Illinois Department of Children and Family Services and is copyrighted by the Child Welfare League of America. The Ontario Ministry of Children and Youth Services purchased a licence to offer the PRIDE program in Ontario in 2000 and began piloting it in 2002.

Working Relationship Between Children's Aid Societies and Foster Homes

Service Agreements

Since 1985, foster parents have been required to sign a service agreement annually with the CAS. This agreement addresses the roles and duties of the CAS and the foster parents, how complaints will be handled, the reimbursement of the foster parents, and foster parents' rights.

Plans of Care

Child protection workers develop plans of care that address the individual needs of each child. These plans involve the child, the foster parents, the worker, and other professionals. Within the first seven days of placement, a preliminary plan of care is established. This plan applies through the first thirty days of placement and addresses the immediate needs of the child, such as medical exams, school registration, and the child's access to his or her natural family. The plan of care is revised "and that Plan of Care carries the child for the next 60 days, and then from that, it's the end of the first 90 days from placement and then it's every 90 days thereafter." Each time the plan of care is reviewed, it is signed by the CAS worker, a CAS supervisor, the foster parent, and the child if he or she is over twelve years of age.

The plan of care established in 1985 recorded the contacts between the worker and other parties, the current situation, the goals that were achieved, and the needs of the child. In 2000, a more detailed plan of care was established, which set out objectives in the areas of health, education, identity, family and social relationships, social presentation, emotional and behavioural development, and self-care. The 2005 plan of care set out the same objectives as the 2000 plan but also included a long-term vision for each of these areas as well as tasks and activities to be performed in relation to each of them.

Each of the plans of care requires certain documentation, including documentation regarding when worker visits were made, dates of medical and dental visits, the latest rights and responsibilities review (discussed in more detail under "Rights and Responsibilities of Children in Care" later in this chapter), and any medications the child is taking.

Partnership Statement

In the past, foster parents were simply advised to raise CAS wards as they would their own children. This was an "exclusive" model of fostering in which the foster parents received little input or assistance from the CAS or the community.

In 1985, with the introduction of licensing standards for foster parents, the model changed from an “exclusive” to an “inclusive” model of fostering, which means the child and foster parents now have more contact with and assistance from professionals and the community.

In 1992, the CAS of SD&G created a partnership statement that addressed the relationship between the Society and foster parents, which was included in the 2005 CAS foster care policy. This statement sets out the respective roles of the CAS and foster parents and stresses the need for “close cooperation” to achieve the goal of ensuring that children are individually equipped “with the means to maximize their potential in the development of meaningful and fulfilling life styles.” The statement says:

... The agency is mandated to act as the “legal guardian” of children in alternate care. As the child’s legal guardian, the agency is ultimately responsible and accountable for the well being of, and planning for children it has removed from their families. The foster parents are seen as “agents of the Society” contracted to provide the daily life experiences for the child ... As we work together, there must be a sense of equity and common purpose.

The statement sets out the importance of each party knowing and understanding its own rights and responsibilities and those of the other party. It comments on the need for the CAS and the foster parents to continually update their service agreement.

Supervision of Foster Homes

Placement Committee

The Placement Committee was established in 1982. This committee meets weekly and reviews all admissions to care made the previous week. It reviews the children’s needs and the skills and abilities of the current placement to determine whether to leave the child in the placement or move the child to a more appropriate placement. CAS workers are required to review placements with the Placement Committee after thirty days from the date of the placement.

Mandatory Visits to Foster Home

In 1985, the CAS of SD&G hired its first resource support worker to meet the requirements of section 114 of Ontario Regulation 550/85. This section stated that all foster home licensees must assign a staff person to supervise and support

every foster family approved by the licensee.¹⁵ The resource support person is required to visit the foster family and consult with at least one foster parent within seven days of a child being placed in the home, then within thirty days of the placement and every three months thereafter.¹⁶ The plan of care is reviewed and updated, as necessary, at each visit. The worker is required to meet with the child alone during each ninety-day visit. The ninety-day visits are tracked and reported to the director of Residential Services. Workers are disciplined for failure to comply with the visiting requirements. Ian MacLean testified that, beginning in the fall of 2009, the CAS of SD&G will introduce unscheduled visits to foster homes.

As of 2006, the CAS of SD&G had six resource support workers, who were responsible for 140 foster homes. The main job responsibilities of these workers include:

1. assisting in recruiting foster parents;
2. screening and conducting home studies on foster parent applicants;
3. signing service agreements with foster parents;
4. taking part in orientation sessions and training for approved homes;
5. assisting with the placement and coordination of children and youth;
6. liaising with and providing ongoing support and counselling to foster parents;
7. conducting annual reviews of foster homes;
8. arranging relief and screening babysitters;
9. maintaining standards for foster care; and
10. running support groups and other groups as required.

Annual Reviews

Since 1985, when Children's Aid Societies began to require a licence to operate a foster parent program, the Ministry of Community and Social Services has conducted random home site visits and interviews with staff, foster parents, and children. It also conducts an annual review that examines CAS policies and procedures.

CAS resource support workers conduct annual reviews of foster homes. This review allows foster parents to provide feedback about their CAS worker and

15. O. Reg. 550/85, s. 114.

16. O. Reg. 550/85. Where a foster family had been approved but no placement had been made, the staff member was to consult with the family every three months. Every licensee was to ensure that a staff person responded within twenty-four hours to any inquiries made by foster parents.

allows wards to provide feedback about their foster homes. It also allows the CAS worker to assess the foster parents and home, including the foster parents' ability to provide physical and emotional care and communicate with CAS staff and comply with CAS policies and procedures. During the annual review, all the children in the home over the age of ten, including foster children and natural children, are interviewed. At the end of the review, a new service agreement is signed.

Crown Ward Reviews

Crown wards are children who are permanently in the care of the CAS. The goals of Crown ward reviews include:

- ensuring that an adequate plan of care is developed for each Crown ward;
- monitoring compliance with the legislation and regulations relating to the care of each Crown ward and issuing directives regarding any non-compliance;
- looking for adequate assessment of needs, suitable placement and support services, and realistic planning with regard to wards;
- making recommendations regarding particular cases and general policies and practices and monitoring their implementation;
- allowing Crown wards to comment on the care they are receiving, their contacts with their biological families, their current situation, and case plans.

The Ministry of Community and Social Services has conducted Crown ward reviews since the 1970s. However, they have become more formal. Every December, a team of five Ministry representatives reviews the files of all Crown wards who have been in care for more than two years. Then, Ministry representatives interview the foster parents or staff and management with regard to the child's placement. All children being reviewed receive a confidential questionnaire that the child returns directly to the Ministry by mail. These questionnaires provide wards with an opportunity to request an interview with a Ministry representative. Any disclosure of abuse in a review is immediately relayed to senior managers, and an investigation is undertaken immediately.

Serious Occurrence Reports

The Ministry of Community and Social Services' 1981 Standards and Guidelines on Child Abuse required Children's Aid Societies to report all serious occurrences

involving children in care to the Ministry's regional office. Serious occurrences include deaths; serious injuries; allegations of abuse or mistreatment, including injuries suspected to have been caused by abuse or mistreatment by CAS staff and injuries caused by the neglect of the caretaker; grievances made by or about children, including grievances about the inappropriate use of detention; and all serious allegations against staff, foster parents, volunteers, babysitters, and temporary caregivers of children. In reporting to the Ministry, the agency was to indicate what had occurred and what steps it had taken to protect the child. If an investigation was warranted, the agency was to undertake the investigation and report back to the Ministry.

The requirement for child protection workers to supply serious occurrence reports to the Ministry was included in the 1984 *Child and Family Services Act*. The report was to indicate not only what happened but also what corrective measures were being taken.

The 2005 CAS foster care policy also contained a requirement to report all serious occurrences. This provision is prefaced by this statement: "Serious occurrence reporting provides the Ministry and, more importantly, the service provider with an effective means of monitoring the appropriateness and quality of their service delivery. This monitoring includes provision for the ongoing review of our practices, procedures and training needs." The 2005 policy requires all serious occurrences to be reported to the Ministry within twenty-four hours of the CAS's being alerted of the occurrence.

Rights and Responsibilities of Children in Care

Since 1985, it has been the responsibility of the CAS worker assigned to a child in care to discuss the child's rights and responsibilities with the child annually and within thirty days of any new placement. If a child is under six years old or lacks capacity, the rights and responsibilities are explained to the caregiver. Children are provided with a pamphlet that describes their rights and responsibilities and are told generally what they can expect in care, including the approved manner of discipline.

Among others, the rights mentioned in the pamphlet include the right to reasonable privacy and the right to receive a written plan of care within thirty days of placement and to participate in the development of and changes to this plan. The pamphlet also informs a child that he or she is not to be disciplined through the use of corporal punishment or by being locked in a room.

The pamphlet states that, if a child feels his or her rights are not being respected, he or she should talk to the social worker, foster parent, or staff at the placement, and, if still not satisfied, the child can ask that the CAS review team hear his or her complaint. After this, if he or she remains dissatisfied,

the child can send a written complaint to the Ministry or his or her ombudsman or Member of Parliament.

The pamphlet states that, between the 14th and 21st day of a child's placement, he or she can request that the placement be reviewed by the Residential Placement Advisory Committee (RPAC), which will review the placement and make recommendations. If the child is still unhappy after this process, he or she can request a further review by the Children's Services Review Board, which will decide either that the child should be moved or left at his or her placement. Ian MacLean testified that no child in the care of the CAS of SD&G has ever requested a RPAC review.

Discipline of Children in Care

Bill Carriere, the former director of Protection Services at the CAS of SD&G, stated that he believed that in Children's Aid Societies in the 1970s, corporal punishment was seen as an acceptable form of discipline for children.

In January 1978, the CAS of SD&G Board of Directors approved a child care policy. This policy cautioned social workers "to always watch for and guard against over-zealous foster parents whose disciplinary measures border on, or are brutal in severity."

In May 1978, the Society's Board of Directors approved another document, entitled "Principles of Care for Children in Placement," which stated:

Severe punishment of a child should only be used as a last resort and should it be considered or if it has been administered, the substitute parent should inform the worker who will discuss the circumstances with the supervisor.

If it appears that punishment is being used too frequently, it is the responsibility of the placing agency to discuss these problems promptly with the substitute parents and to act in the best interests of the child.

At this time, spanking was permissible. "Principles of Care for Children in Placement" defined what constituted "spanking" and set out cautions regarding the negative effects of its use. This document also stated that the purpose of punishment should never be to humiliate or disgrace the child.

In 1983, the CAS of SD&G Board approved a "Group Home Policy Manual." This manual set out "Approved Disciplinary Procedures" for group homes, which expressly prohibited the use of corporal punishment for a resident by group home parents, employees, or residents.

In 1984, the Board approved a policy entitled "Child Care Policies and Procedures." A discipline policy was approved as part of this policy in April 1985. In the discipline policy the CAS took the position that certain types of discipline should never be used against children in its care, including "any striking or assaulting of a child" or "the use of deliberate or harsh or degrading measures that could humiliate a child or undermine a child's self-respect." It also outlined the consequences of violating the policy. Very similar principles of permitted and prohibited discipline are set out in the 2005 foster care policy and 2005 child care policies, which continued to apply at the time of the Inquiry.

The McMaster model of foster home screening, which was employed by the CAS of SD&G from 1990 to 2006, included questions meant to determine the style of discipline within a family. Ian MacLean commented that this helped workers determine whether the family members would agree with the CAS's discipline policy. He stated, "if they didn't agree with the discipline policy, we didn't open. It was clear."

Use of Restraint in a Group or Foster Home

Although foster parents have been prohibited from using any corporal punishment on Crown wards since 1985, physically holding a child, also referred to as "restraining," is allowed if it is part of the plan of care prepared by the parent and CAS worker and if the foster parent is trained in the restraint procedure. Ian MacLean explained that restraint is not a method of discipline but rather a method of control for safety reasons. He stated that restraint could be used on children through to adolescence. However, he pointed out that different methods should be employed depending on the age of the child, because the holding a four- or five-year-old is not the same as holding a ten-, twelve-, or fifteen-year old.

CAS documents from the mid-1980s have stated that restraining a child is permitted only if the child is "totally out of control and is about to do damage to himself [or] to someone else." While older documents also allowed for restraint if the child were about to damage property, the 2005 foster care policy allows restraint only if the child is already "engaged in severely destructive damage to property." Ian MacLean explained that the CAS has tried to steer away from employing restraint to prevent damage to property because there are other methods of achieving this end.

Since 2005, a serious occurrence report must be completed in response to any use of restraint on a CAS ward. Ian MacLean stated that this reporting allows the CAS to identify trends and respond in order to improve its services to children.

Group Homes

In the early to mid-1970s, the CAS of SD&G established three group homes that were staffed by CAS employees. As of 1977, all of these homes had been closed and four parent-model group homes had been created. These parent-model group homes were developed, approved, and supervised by the CAS of SD&G and were in operation from 1977 to 1981. These homes were run by approved foster parents with a good working history with the Society. After the Ministry of Community and Social Services introduced group home standards and licensing requirements in the early 1980s, one of these homes became a licensed parent-model group home for complex-needs children, operating until 1992, and the others became specialized foster homes.

Some privately operated group homes have operated and are continuing to operate within the jurisdiction of the CAS of SD&G. Sunrise Home for children with severe handicaps opened in 1976 and closed in the 1980s. It was open for private placements and placements from the CAS of SD&G. Open Hands is a home for developmentally delayed children. It was initially privately owned and operated, from the 1970s to early 1980s, but was later licensed by the Ministry. As of 2006, the CAS of SD&G did not have any children placed in that home. The Akwesasne Group Home is a home for First Nations adolescents that has been operating since the mid- to late 1990s.

A CAS of SD&G Group Home Policy issued in 1983 stated that “[t]he purpose of group homes is to provide skilled, effective parenting to a group of children who cannot remain or function in their own home or in a foster home, but who have some ability to function as members of the community.” It stated that CAS of SD&G group homes were parent-model group homes, which were intended to care for children who have had poor relationships with adults and would feel threatened by a close relationship with an adult. These homes were staffed by resident house parents, who were not employees of the CAS but who had signed a contract with the CAS to offer services in the group home. The CAS and group home parents were jointly responsible for the operation of these homes.

From the early 1980s to around 2000, there was only one local group home.¹⁷ Around 2000, the CAS of SD&G began to develop local group homes. As of 2006, there were six local group homes that were participating in the CAS of SD&G Outside Paid Resource Support and Development Group.

Around 2004, the philosophy of the CAS of SD&G changed, such that the focus was on attempting to place wards in foster homes rather than in group homes, also known as outside paid resources (OPRs). Rather than placing children permanently in outside paid resources, the CAS may place children temporarily

17. A boy's residence known as Laurencrest.

in OPRs to stabilize and assess them, after which a decision will be made as to whether the child should be placed in a foster home or a local group home.

In 2004, the Foster Success Program was launched, with the goal of moving children placed in OPRs to foster homes. Four more child and youth care workers were hired to assist with this program. At the time of the Inquiry, twenty wards had been successfully moved from OPRs to foster homes.

In a report to the CAS Board of Directors about the CAS of SD&G's serious occurrence reports in 2004, Ian MacLean stated that the clear majority of reported restraints of wards in 2004 involved Crown wards in OPRs. In fact, he found that none of the restraint incidents involved children in foster homes. The report stated that "[t]he Agency continues to place youth in Outside Paid Resources when their behaviours are high risk or such that would jeopardize a foster family placement."

CAS resource workers are responsible for overseeing contracts with OPRs. The CAS meets with its OPRs every six weeks, and programs are adjusted to ensure that needed services are provided and beds are used to capacity. The CAS conducts annual reviews of OPRs, similar to those it conducts of its foster homes. When a child is placed in a group home containing more than eight children, the CAS Residential Placement Advisory Committee conducts mandatory review of his or her placement.

A number of policies, protocols, and procedures have been adopted in recent years regarding the establishment of foster homes and the screening, training, and supervision of foster parents. These recent amendments have provided much-needed structure to the foster care system. Prior to 1985, there were few, if any, formal policies and procedures, which in part explains some of the reported allegations of abuse within foster and group homes in the specific case files I comment on in this chapter. Although there has been significant improvement in the foster care system to date, there is always room for further improvement. On the issue of foster parent screening, I recommend that all Children's Aid Societies in the province be provided access to the Fast Track System for the purpose of screening potential foster parents. I comment on further recommendations in the following sections.

Duty to Report

Child Welfare Act, 1965

The first evidence of a duty to report did not emerge until 1965. Section 41(1) of the 1965 *Child Welfare Act*, proclaimed in force in 1966, stated: "Every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child shall report the information to a children's aid society or

Crown attorney.”¹⁸ There was no reference to sexual abuse. However, Kevin Morris, a former Senior Policy Analyst at the Child Welfare Branch of the Ministry of Community and Social Services, stated that it could be argued that sexual abuse should be included within physical ill-treatment.

Section 41(2) of the 1965 *Act* made it clear that the duty to report existed regardless of the confidential status of the information. It stated: “Subsection 1 applies notwithstanding that the information is confidential or privileged, and no action shall be instituted against the informant unless the giving of the information is done maliciously or without reasonable and probable cause.”

Child Welfare Act, 1978

Section 49(1) of the 1978 *Child Welfare Act*, which came into force in 1979, stated, “Every person who has information of the abandonment, desertion or need for protection of a child or the infliction of abuse upon a child shall forthwith report the information to a society.”¹⁹ The option to report to a Crown attorney was removed, leaving Children’s Aid Societies as the sole agencies to which reports were to be made. Furthermore, the reporting duties were expanded to include anyone who had information regarding the “infliction of abuse upon a child.”

Section 47(1) defined “abuse” for the purpose of the reporting provisions as:

a condition of,

- a) physical harm;
- b) malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or
- c) sexual molestation.

The 1978 *Act* introduced a duty on professionals to report suspected abuse. Section 49(2) stated that:

Notwithstanding the provisions of any other Act, every person who has reasonable grounds to suspect in the course of the person’s professional or official duties that a child has suffered or is suffering from abuse that may have been caused or permitted by a person who has had charge of the child shall forthwith report the suspected abuse to a society.²⁰

18. *Child Welfare Act, 1965*, S.O. 1965, c. 14, s. 41.

19. S.O. 1978, c. 85, s. 94(1(f)(ii)).

20. *Ibid.*

It did not identify which professionals were subject to this duty. Unlike section 41(1), which required every person who had “information” regarding the mistreatment of a child to report it to a Children’s Aid Society, this section required professionals to report if they had “reasonable grounds to suspect” that a child was being abused. This section also differs from section 41(1) in that it requires professionals to report suspicions of past abuse.

The 1978 *Child Welfare Act* made it an offence for professionals to contravene the duty to report suspicions of child abuse found in subsection 49(2) of the *Act* and set out a penalty for this offence. Kevin Morris explained that the particular obligation on professionals was included because there was a recognition that people who were trained, had professional credentials, and were working with children were in a position to be more aware of and sensitive to the conditions of children.

Bill Carriere testified that the Children’s Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) does not have a policy regarding what to do if someone fails in his or her duty to report. However, he said that the practice was to contact the individual and explain reporting obligations. He stated that the Society took this same educational approach to professionals. He said he was not aware of any cases in which the Society reported to the police about a failure to report.

Section 49(3) of the 1978 *Child Welfare Act* stated that the duty set out in section 49(1) and (2) applied:

... [N]otwithstanding that the information reported is confidential or privileged and no action for making the report shall be instituted against any person who reports the information to a society in accordance with subsection 1 or 2 unless the giving of the information is done maliciously or without reasonable grounds to suspect that the information is true.²¹

However, section 49(4) stated that “Nothing in this section shall abrogate any privilege that may exist between a solicitor and the solicitor’s client.”²²

Ministry Training Materials, 1979

Kevin Morris testified that, after the 1978 *Act* was proclaimed, the Ministry of Community and Social Services recognized that Children’s Aid Societies needed a solid understanding of physical and sexual abuse. Thus, in 1979, the Ministry

21. *Ibid.*

22. *Ibid.*

created training materials regarding how Societies were to carry out investigations of abuse. These materials defined sexual molestation for the purpose of the reporting provisions as “any improper sexual activity between a child and the adult who has his care or custody.” They also stated:

The consent of the child is irrelevant, as is the absence of physical injury. Incestuous relationships are included in the intent of the definition. Improper or excessive sexual activity between children may constitute molestation if an adult in charge of either child knows about it and does nothing. The definition is not intended to encompass normal sexual experimentation between children.²³

The materials did not provide guidance regarding what kind of sexual activity would constitute sexual molestation.²⁴

Ministry Standards and Guidelines on Child Abuse, 1981

Neither the 1965 nor the 1978 *Child Welfare Act* mentioned a duty to report a *risk* of abuse. The duty set out in these *Acts* was in regard only to a child who was suffering or had suffered abuse. A document entitled “Standards and Guidelines: Child Abuse,” published by the Ministry of Community and Social Services in 1981, contained a definition of a “child at risk” as “a child who is exposed to the danger of incurring probable injury through child abuse.” Kevin Morris testified that this definition was an indication that the Ministry was beginning to deal with the possibility of abuse rather than just past or current abuse.

The 1981 standards and guidelines stated that the definition of abuse included in the 1978 *Child Welfare Act* could be interpreted so broadly that it could include all protection cases. However, the document stated, “[a]ll but the most severe ... are excluded as incidents to which the reporting law and penalty provisions would apply.”

The document explained that the legal approach to child abuse was to consider serious harm or the potential for serious harm to the child, which should be substantiated by specific evidence. The document stated that, for the purposes of the *Child Welfare Act*, “this usually occurs in the context of a relationship between the child and the parent(s) or caretaker(s).”

The document explained that the social work approach was to see child abuse as a condition or a continuum, rather than a single incident, and that often substantial evidence would be lacking.

23. Ministry of Community and Social Services, “Protection & Care of Children, The Child Welfare Act, 1978, Part II: Training Materials: Abuse” (1979), p. 3.

24. *Ibid.*

The document then went on to explain:

In determining whether a situation is child abuse for purposes of The Child Welfare Act the legal requirements of substantiated evidence and social work understanding of behaviour and environment are blended. Therefore, the determination of child abuse is made on a case by case basis rather than by clearly defined categories of situations or conditions.

The document stated:

Although many factors are considered in each case, the major ones are:

- the conditions of the child
- the circumstances surrounding the incident(s) of alleged or potential abuse
- the history of the child and family
- the potential danger to the child
- the potential of the family to provide a safe and healthy environment for the child.

Child and Family Services Act, 1984

The 1984 *Child and Family Services Act*, which came into force in 1985, set out the public duty to report in section 68(2) as follows: "A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society."²⁵ Kevin Morris explained that this revised duty introduced a concept beyond merely reporting past or current abuse: someone who was aware of a situation that raised a concern that something *may* happen to a child would be obliged to report.

The duty to report for professionals was set out in section 68(3):

Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society.

Section 68(4) included a non-exhaustive list of professionals who had a specific duty to report any suspicions of child abuse. The list included:

25. S.O. 1984, c. 55.

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth recreation worker;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

Section 68(1) stated that, for the purposes of the reporting requirements of the 1984 *Act*, “to suffer abuse,” which is the language used in regard to the reporting requirements of professionals, means to be in need of protection within the meaning of clause 37(2) (a), (c), (e), (f), or (h). The relevant clauses are as follows:

A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person’s failure to care and provide for or supervise and protect the child adequately;

...

- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

...

- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;
- (f) the child has suffered emotional harm, demonstrated by severe,
 - i anxiety,
 - ii depression,
 - iii withdrawal, or
 - iv self-destructive or aggressive behaviour,
 and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

...

- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.

Kevin Morris explained that his understanding was that the terms "sexual molestation or sexual exploitation" in section 37(2)(c) included more than just physical contact. They included situations where a person was gratifying themselves to the detriment of the child.

Bill Carriere pointed out that, as section 68(3) did not refer to the duty to report a suspicion that a child was *at risk* of suffering sexual molestation or exploitation, professionals did not technically have an obligation to report a suspected risk of sexual molestation or exploitation.

The 1984 *Act* maintained the same penalty for professionals who did not report suspected abuse as was contained in the 1978 *Act*, which was a fine not exceeding \$1,000.

Section 68(6) of the 1984 *Act* stated that "[a] society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director."

Section 68(7) stated that reporting was required regardless of whether the information was confidential or privileged and that no action could be taken against a person acting in accordance with the reporting provisions unless the person acted maliciously or without reasonable grounds for the belief or suspicion, as the case may be. Section 67(8) stated that nothing in the *Act* was meant to violate solicitor-client privilege.

Ministry Revised Standards, 1992

In 1992, the Ministry of Community and Social Services released "Revised Standards for the Investigation and Management of Child Abuse Cases by the Children's Aid Societies Under the Child and Family Services Act." These standards stated:

... To be considered a person in charge of the child one need not be a parent or person exercising parental rights, but may also be anyone having responsibility for caring for a child. The determination of whether or not a person is in charge of the child will depend on the facts of each situation. Examples of persons who may fall into this category could include baby-sitters, teachers, Big Brother/Sister, recreation worker.

The abuse of a child by a person who is not in charge of the child is not reportable child abuse as defined by the *CFSA*. The most common example of this sort of a situation is sexual molestation by a stranger. This kind of occurrence is dealt with under the *Criminal Code*...

Child and Family Services Amendment Act, 1999

Section 22(1) of the 1999 *Child and Family Services Amendment Act (Child Welfare Reform)*,²⁶ which was proclaimed in force on March 31, 2000, set out a new version of a duty to report, which continues to apply today.

Sections 72(1) through (6) of the *Child and Family Services Act, 1990* were repealed and replaced with new provisions. Section 72(1), entitled “Duty to report child in need of protection,” now states:

Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person’s,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.

26. S.O. 1999, c. 2.

4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.
5. The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behaviour, or
 - v. delayed development,and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.

The amendments to section 72(1) made significant changes. These changes were:

- 1) introducing the notion of a pattern of neglect (sections 72(1)1.ii and 2.ii);

- 2) stating that a report must be made if there is a *risk* that a child is likely to suffer physical harm or be sexually molested (section 72(1)4);
- 3) adding a requirement to report situations of children suffering emotional harm caused by their caregiver (section 72(1)6); and
- 4) lowering the threshold for when emotional harm had to be reported by using the term “serious” as opposed to “severe” in relation to anxiety, depression, etc. (section 72(1)6).

Section 72(2) now makes the duty to report an ongoing duty, so that even after a report is made about a particular child, another report is required whenever there are additional reasonable grounds for suspicion that the child may be in need of protection.

Section 72(3) specifies that the report must be made by the person with the reasonable grounds for suspicion and may not be delegated to another person. Kevin Morris explained that this addition was made because, in the past, some people, especially those in large institutions, would make the report to their supervisors, but the information was not passed on to the Society.

Section 72(4) states that it is an offence if a professional referred to in subsection (5) fails in his or her duty to report a suspicion under subsection (1) and the information upon which the suspicion was based was obtained in the course of his or her professional or official duties. The penalty for this offence remained the same as in the previous legislation—a fine of not more than \$1,000.

The list of professionals who had a particular duty to report remained unchanged.

In section 72(7), which stated that no action could be taken against a person acting in accordance with the reporting provisions unless the person acted maliciously or without reasonable grounds for the *belief or suspicion*, the word “belief” was removed. Bill Carriere explained that the threshold for suspicion is lower than the threshold for belief. He stated that the intention was to ensure that people were not waiting too long to report or collecting more information than required before reporting.

The provision that a Society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse must report the information to a director was moved to section 72.1(1).

The definition of what it means “to suffer abuse” was moved to section 72.1(2). It states that, “In this section ... ‘to suffer abuse,’ when used in reference to a child, means to be in need of protection within the meaning of clause 37(2) (a), (c), (e), (f), (f.1) or (h).”

Clauses (f.1) and (g.1) were added to section 37(2) as part of the 1999 amendments, such that section 37(2) currently states:

A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;²⁷
- (d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c);
- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;
- (f) the child has suffered emotional harm, demonstrated by serious,
 - (i) anxiety,
 - (ii) depression,
 - (iii) withdrawal,
 - (iv) self-destructive or aggressive behaviour, or
 - (v) delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or

27. "On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed by the Statutes of Ontario, 2008, chapter 21, section 2 and the following substituted:

(c) the child has been sexually molested or sexually exploited, including by child pornography, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;..."

pattern of neglect on the part of the child's parent or the person having charge of the child;

- (f.1) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition ...

Recent Amendments

In 2006, mediators and arbitrators were added to the list of professionals set out in section 72(5) of the *Child and Family Services Act, 1990*.²⁸ However, even with this addition, the list of professionals is not considered exhaustive. All professionals who have reasonable grounds for suspicion of abuse that arise in the course of their work with children must report, regardless of whether their profession is on the list in section 72.

I will review a number of investigations and cases involving the CAS where the duty to report was an issue. I will make recommendations regarding amendments to the duty to report in the conclusion to this chapter.

Child Abuse Register

The Child Abuse Register (CAR) is administered by the Ministry of Community and Social Services. The Register comprises confidential records of the names of persons

28. S.O. 2006, c. 1, s. 2.

who have been verified by a Children's Aid Society (CAS) as having abused children within the meaning of the *Child and Family Services Act*. The data in the CAR consists of the name of the alleged abuser, his or her address(es), particulars about the abuse, and the relationship of the abuser to the victim. The CAR is used by all Children's Aid Societies as part of their investigations into alleged abuse.

Prior to the inception of CAR in 1979, there was a central registry of child abuse. However, in the 1970s, there were concerns arising about its operation. For example, because there were no standard requirements around the investigation of abuse, and agencies were operating on their own best practice, and, because reporting was not mandatory, there was much inconsistency in placements on the registry. Some issues also arose concerning civil liberties and the security of information. One of the initial rationales for the registry was that it would be useful for tracking an alleged abuser travelling from community to community. Research showed, however, that abusers did not move around very much, so the registry also had limited value.

The *Child Welfare Act, 1978* came into force June 15, 1979. At that time, amendments to the *Act* establishing the new CAR were proclaimed into force. Section 52(2) of the *Act* set out the duty to report to a Ministry director any verified allegations of abuse of a child, including a child in care of a Society. In November, reference to reporting to the CAR was included in the "Standards and Guidelines for the Case Management of Child Abuse Cases" training materials.

In February 1981, the Ministry published "Guidelines for Reporting to the Register: Child Abuse." The maintenance of the central register was now mandatory. The former registry was maintained only as an administrative convenience not required by law. The guidelines instructed that every person who was registered must be notified in writing of his or her registration. Further, the 1981 guidelines indicated that "[r]egistered persons have the right to inspect the Register; to request removal of their names and, if this is denied, to have a hearing to review their request. If such a hearing recommends the name(s) stay on the Register, there is the right to appeal the decision to Divisional Court."

The central register was "intended to be a useful tool in the overall effort to protect children and prevent child abuse." Some of the specific reasons for its establishment were:

1. to learn more about child abuse in Ontario, both for research and practice purposes;
2. to assist in tracking abused children, their families, and suspected abusers so that protection efforts may continue uninterrupted;
3. to monitor child abuse case management and programs of the Children's Aid Societies.

Some social workers report that notification of registration may underline the seriousness of their actions to alleged abusers, and act as a deterrent.

Reporting to the Child Abuse Register

The 1981 guidelines state that, in accordance with the *Child Welfare Act, 1978*, “all verified cases of child abuse are to be reported to the Central Register.” However, it was noted that defining and verifying abuse was difficult. Not all cases of suspected abuse were to be reported to the CAR.

For the purpose of the reporting requirements, the *Child Welfare Act, 1978* defines “child abuse” as a condition of: physical harm; malnutrition or mental illness of a degree that, if not immediately remedied, could seriously impair growth and development or result in permanent injury or death; or sexual molestation.

Normally, cases to be reported are those in which there is a “perceived pattern of abusive behaviour.” The guidelines indicate that “[t]he situation should be serious enough to warrant a report to the Child Abuse Register and should not just be a single accidental injury.” However, if a child’s injuries are serious, an isolated incident of abuse may warrant reporting to the Registry. Bill Carriere testified that the CAS of SD&G has taken the position that an isolated incident of sexual abuse warrants registration. A visible injury is not required before reporting. Continued threats of harm to the child may create emotional abuse that should be reported.

Physical harm is to be reported to the Registry if a child has been injured or is at risk of being injured by a person who has “care, custody, control or charge of him, or if that person has permitted the injury.” Mental ill-health is to be reported if the child’s emotional needs have been or are being so neglected or interfered with that his or her normal development has been seriously affected and he or she is likely to be “impaired.” Sexual molestation is to be reported in cases where sexual activity has occurred or is occurring between an adult and a child and in cases of inappropriate or excessive sexual activity between children that goes beyond normal experimentation and where there is a significant difference in the ages of the children.

Not only a parent but anyone who has the responsibility of caring for a child on a short-term or long-term basis can be an alleged abuser. Persons without formal responsibility for the care of a child may also be identified as alleged abusers. The abuse of a child by a person unknown to him or her (that is, a stranger) is not reportable child abuse as defined by the *Act* and is dealt with, instead, under the *Criminal Code*.

Alleged abuse is “verified” and reportable to the CAR once the director of the CAS, on the basis of investigation and consultation, has reasonable grounds to believe that the child is or has been abused. The judgment as to whether to

report the alleged abuse to the CAR is made after the verification procedure is complete. Verification does not require proof beyond a reasonable doubt that abuse has occurred. As noted in the guidelines, "[t]here frequently will be no external corroboration of the facts upon which the CAS is basing its opinion."

If the decision is made to report to the CAR, the Society must tell the alleged abuser of its intention and, ideally, explain the purpose of the CAR.

The law requires that the CAS report verified information concerning abuse of a child to the CAR within fourteen days after the information is verified by the Society. Once the name has been recorded in the Registry, the alleged abuser will be advised and informed of the right to inspect the information and of the procedure available for correction of false information or expunction. A name recorded in the CAR will be retained for a minimum period of twenty-five years. The guidelines require the submission of a follow-up report:

- 1) four months after the initial report if the case is still active.
- 2) on each anniversary of the initial report until the case is closed.
- 3) when there is a significant change in circumstances, e.g. disappearance of a family, etc.
- 4) when a case has been referred or transferred to another Society or child protection agency.
- 5) with the initial report ... if a case is being closed or transferred at the same time that a Form 6 is being submitted.

The CAR was maintained under the 1984 *Child and Family Services Act*. In August 1987, the guidelines for reporting to the Register were revised to reflect appropriate references to provisions in the new legislation. There were no significant changes, however, as around this time a review of the CAR was being undertaken because of contentious issues being raised about the nature and functioning of the Register and there would potentially be significant revisions to the CAR as a result of that review.

Review of the Child Abuse Register

Professor Nicholas Bala conducted some studies with respect to the Ontario CAR in 1987 and prepared a report in 1988. He testified at the Inquiry that one of the issues with the CAR is that the obligation to report applies only when the alleged abuser has charge of a child, and it is not clear exactly what it means to have charge of a child and who properly falls under that category. Professor Bala also discussed the fact that the CAR in Ontario cannot be used as a screening tool by employers and therefore is of limited use. He recommended that the CAR be dramatically changed or shut down. Professor Bala testified that the Ontario

government announced it would accept the recommendations in his report, but they had not yet been fully implemented.

In the 1999 amendments to the *Child and Family Services Act*, the sections related to the CAR were repealed. These provisions, however, have not yet been proclaimed, and the CAR is still functioning.

Utilization of the Child Abuse Register

As of March 31, 2005, there were 26,988 names of alleged abusers on the CAR. Data from the CAR is uploaded daily to the Ministry of Children and Youth Services' Child Protection Fast Track Information System (Fast Track) and can be accessed by Societies that are conducting investigations. The CAS of SD&G registered 429 verified cases between 1977 and 2006. The largest number of registrations by the CAS of SD&G was in 1986, when thirty-six names were registered, and the lowest number was in 1981, when only one registration was made. Of the verified cases registered by the CAS of SD&G, 317 were for verified sexual abuse cases.

The Child Abuse Register is of particularly limited value in respect to historical child sexual abuse cases. Because it is not within the CAS mandate to investigate reports of historical abuse made by an adult unless there is a concern that the alleged abuser may still be abusing children, these allegations would not be verified, and the CAS could not register the alleged offender on the Child Abuse Register.

The decision of the CAS whether to register a person with the CAR is independent of whether the individual was found guilty in a criminal proceeding. As long as the CAS is satisfied on a balance of probabilities that the abuse occurred, it will make the registration. There is no relationship between when the Society makes a registration to the CAR and the timing of the outcome of the criminal process. In most cases, the registration occurs well before any criminal conviction. In reviewing registrations, Bill Carriere noted that, from 2000 to April 2006, 91 percent of the CAR registrations for sexual abuse also had a corresponding criminal charge.

Is the CAR Still a Useful Tool?

As mentioned in the section dealing with policies and protocols of the CAS, Children's Aid Societies in Ontario are not permitted to use the Child Abuse Register to screen their potential applicants for employment.

Mr. Carriere testified that he didn't think the CAR was utilized frequently across the province. He stated that he had not found it particularly useful and said, "I do not see it as a tool to protect people." He noted his concern that the

forms have so much information regarding the victims. He felt that the description required of the victim has discouraged them from consenting to the use of the process.

As discussed above, Professor Bala testified that the CAR needs to be changed, in part because it cannot be used for employment screening. He also noted that, given the existence of the Fast Track System, he would anticipate that agencies would rely less on the Child Abuse Register.

Dr. Nico Trocmé noted that, although there are concerns with the reliability and consistency of reporting to the CAR, especially since 1986, when it was subject to widespread criticism, the CAR provides the only data regarding child abuse reporting dating back to the late 1970s that distinguishes between physical and sexual abuse. Dr. Trocmé noted, however, that for the past five or six years, Children's Aid Societies have been connected by a computer system and so can easily find out if people had previous contact with a Society. Therefore, he concluded that the Children Aid Societies no longer need the Child Abuse Register.

I have heard evidence from expert witnesses and employees of the CAS criticizing the Child Abuse Register. The implementation of the Fast Track System now permits the tracking of individuals who have had contact with any Children's Aid Society in the province. Witnesses have also indicated that the CAR has a very limited use, because Societies cannot access it to screen employees or foster parents. I have also heard evidence that comparable child abuse register systems in other provinces have more practical application. I recommend that the government of Ontario reassess the Child Abuse Register to determine if it is still useful, given the new systems and tools that are now in place. If it does, the Child Abuse Register should be revised to address some of the deficiencies that I have highlighted in this section.

The Dawson Review and Report

The "Review of the Management of Child Abuse and Child Protection Cases by the Children's Aid Society of Stormont, Dundas and Glengary [sic]" (the Dawson Review) was conducted in 1988 by Ross Dawson, a former executive director of a Children's Aid Society who was selected to participate by the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (the CAS of SD&G), and Brit James, also a former executive director, selected by the Ministry of Community and Social Services (MCSS). The two conducted an audit and review of the protection services offered by the CAS of SD&G at the request of the parties and made fifty-six recommendations to improve the quality of services offered. They randomly selected files to review and had access to staff. A report

of their findings and recommendations (the Dawson Report) was completed and submitted to the CAS of SD&G in December 1998.

The Dawson Review was initiated following a written complaint by an official at the Ontario Attorney General's Office reported to the MCSS. The concern related to the management of a particular child sexual abuse case, involving Ron Locey, a known sex offender, which had been handled by the CAS of SD&G.

The Case of Ron Locey: A Failure in Child Protection

The CAS of SD&G first became involved with Mr. and Ms Pharand in 1970, when Ms Pharand's mother, the maternal grandmother of the child in question, reported that her daughter was not caring for her child, who suffered from a severe case of cerebral palsy. Ms Pharand separated from her husband in 1971 and developed a relationship with Ron Locey sometime in 1972. In 1975, Mr. Locey was convicted on charges of rape and gross indecency and was sentenced to a period of incarceration of six years. Ms Pharand married Mr. Locey on August 1, 1976, while he was in custody. Mr. Locey was eventually paroled but was incarcerated again in 1980 following his conviction of a charge of gross indecency involving his eight-year-old stepdaughter. On June 11, 1982, shortly before Mr. Locey was to be paroled from this sentence, the CAS file on the family was re-opened. Mr. Locey was released from the Kingston penitentiary on June 21, 1982, with no restriction on contacts with children. Case recordings indicate that the CAS worker was concerned that Mr. Locey could again sexually abuse a child because he had refused treatment while in prison. The CAS developed a plan with the family, which required Mr. Locey to live apart from his family until the CAS of SD&G was satisfied that he had made significant gains from treatment. By the fall of 1982, Mr. Locey was living with his wife and the children. In 1983, Mr. Locey was once again charged and convicted of indecent assault involving his stepdaughter and sentenced to four years of imprisonment.

Following his release, in 1986, the mother resumed her cohabitation with Ron Locey. The stepdaughter, who had been living in Guelph, returned to Cornwall at age sixteen but was not living with her mother and Mr. Locey. The CAS of SD&G were asked by the Guelph CAS to supervise her. Mr. Locey had been paroled with a condition that he was not to associate with females less than eighteen years of age. The CAS worker was aware, however, that Mr. Locey was in contact with the victim. Bill Carriere did not know if the CAS contacted the local police or the Ontario Provincial Police at that time. Mr. Carriere admitted that, in hindsight, he and his colleague should have contacted the police, as they were aware of the parole violation. In March 1987, Mr. Locey was convicted of a third sexual assault of his stepdaughter. He was sentenced to a further period of incarceration of four years.

Mr. Carriere acknowledged that Mr. Locey had broken the conditions imposed and that the CAS had not enforced them. He testified that "the tragedy in this situation" was that he had not read the worker's notes to see that Mr. Locey had broken his parole violation and was in contact with his stepdaughter. Mr. Carriere admitted that things were unfolding contrary to the best interest of the young girl, but the worker took no steps to intervene. The worker in the Locey case, who had substantial contacts with the family, thought Mr. Locey was permitted to be in contact with the victim, with supervision. This was incorrect. Mr. Carriere said that he learned from the case the importance of exact language and of ensuring that workers understood conditions. He acknowledged that they could have attached Mr. Locey's probation order to the front of the file and met with the probation officer to avoid any confusion. I agree, and it is unfortunate that this was not done.

In October 1987, the Ministry of the Attorney General wrote to MCSS, outlining concerns about the handling of the Locey matter by the CAS of SD&G. As a result of these concerns, the MCSS conducted a thorough review of the case, which was completed in March 1988. The review concluded that the case was "improperly managed," and ten recommendations were made. One of the recommendations was that the Board "have a review conducted across the agency, of existing methodology, protocols and handling of a cross section of child sexual abuse cases in order to assure itself and MCSS Area office that appropriate protocols, case management processes and decision making processes are in place."

The Dawson Review Is Undertaken

In response to this recommendation, from the March 1988 review, the CAS of SD&G and the MCSS met to determine the terms of reference for this new review. The work, which came to be known as the Dawson Review, was completed in September 1988. The terms of reference for the Dawson Review were as follows:

- I. the review of the adequacy of case management related to a sample of:
 - a. child abuse cases (both physical and sexual abuse)
 - b. court ordered child protection cases involving child protection concerns other than physical and sexual abuse.
 - c. general child protection cases (excluding those covered in a and b above)
 - d. protection services to native children and families on the Reserve under the auspices of Akwesasne Child and Family Prevention Program.

- II. the review of the adequacy of information gathering, clinical assessment, case planning and decision making processes including agency management practices.
- III. the review of the adequacy of the systems utilized by Society's Board and management to ensure an acceptable level of service.

A Steering Committee was established to guide the review, resolve operational issues, and receive and review the report. Each file was reviewed regarding compliance with the *Child and Family Services Act*, Ministry policy, and the Society's policies and procedures. Each file was also reviewed regarding clinical adequacy of initial response, assessment, case planning, service provision, case transfer, and termination. In total, 104 cases were reviewed, which accounted for approximately 18 percent of the total number of CAS of SD&G open family cases as of September 1, 1988. In addition to a case file review, Mr. Dawson also reviewed agency policies and procedures, management systems, board systems, staffing, and Native services.

The Dawson Report Findings and Recommendations

A number of findings and recommendations were made in the Dawson Report, a few of which will be discussed briefly below. In particular, those relating to worker/supervisor caseloads, policies and procedures, management, quality control, and record keeping will be highlighted.

The Dawson Report began by noting that "the Children's Aid Society of Stormont, Dundas and Glengarry provides services to a significant number of severely troubled families."

The report stated that "[i]t is not possible to provide a high level of service to child protection case [sic], and in particular cases with severe psycho-social pathology, if caseloads exceed 20 cases per social worker." It was found that the supervisor to social worker ratio at the CAS of SD&G was significantly above the provincial average for Children's Aid Societies. In addition, the supervisor to staff ratio was also "well above generally accepted social work standards which advocate an ideal ratio of 1-6 and a maximum ratio of 1-8." This placed excessive demands on supervisors and also contributed to some of the quality control and case management deficiencies identified in the Report. Mr. Carriere agreed that the supervisor to staff ratio at the CAS of SD&G was above accepted standards and that the demands placed on supervisors were excessive. He noted that, at one point, he was supervising ten people.

Mr. Carriere acknowledged that the caseloads for each worker have to be of a reasonable size so as to allow them the time to effectively work with families. When caseworkers carry too many cases and are responsible for the well-being

of too many children, they can run into difficulties. Mr. Carriere agreed with the suggestion that the caseloads for supervisors were impossibly high.

The Report found that the staff turnover observed at the CAS of SD&G dictated a need for current and accessible policies and procedures. Although staff were aware of the existence and general content of the agency's policy and procedure manual, they were not fully aware of the details contained in the manual. The manual was found to be outdated and incomplete. It contained no policy and procedures with respect to several critical areas such as child abuse and child protection services. A number of protocols and manuals developed by the Society, including the child abuse manual and sexual abuse protocol, had not been formally adopted by the agency or incorporated into its policy and procedure manual.

The Report noted that little had been done to develop policies and procedures that reflected the introduction of the 1984 *Child and Family Services Act*, whose introduction required major changes to the way child welfare agencies provided services.

The Dawson Report recommended that the Board establish a three-year schedule to review and develop agency policy in a number of areas, that the Board monitor the implementation, and that intensive training be given to all staff on child protection and child abuse policies and procedures. It also recommended that comprehensive and revised child protection and child abuse policies and procedures be developed immediately. The Report also directed the executive director to assume full control of the process of policy review and development.

The Dawson Report found that the management team and supervisors at the CAS of SD&G had extensive child welfare and child protection experience. The experience level of management staff was found to be "on average, higher than their management counterparts in other Children's Aid Societies." Morale in the management group was found to be positive "despite the excessive workload." However, it was unclear who was ultimately responsible for directing clinical work at the agency. There was a need identified for one person to have this overall responsibility. There was also a lack of recent clinical training for key management personnel. There was no established system for investigating, assessing, and managing child protection and child abuse cases. The Dawson Report noted: "Overall the quality of clinical direction provided by the agency is considered to be seriously flawed."

In discussing the Locey case, Bill Carriere recognized a need for tighter risk management and more face-to-face work between the worker and supervisor, with fixed meetings. He acknowledged the lack of supervision.

Concerns related to quality control were also identified. Performance evaluations of all staff and management were not completed annually. There was inadequate orientation for staff. Existing procedures for case documentation,

planning, and case transfer were seldom followed. There was limited statistical tracking with respect to services. The Dawson Report recommended the following: the establishment of the position of clinical director; training for management in clinical supervision, the identification, dynamics, assessment, and treatment of child abuse and high-risk cases, and risk assessment and risk management; a uniform system of case management; a system of risk assessment; clinical supervision; and a new orientation program for staff.

Non-compliance with case documentation was a noted problem. Most child abuse files were found to be “woefully lacking with respect to the documentation required.” The initial response to allegations of abuse was found to be “good.” The follow-up performed within one to two weeks after referral was described as “well done,” but many investigations were incomplete and did not comply with Ministry guidelines.

Due to “insufficient documentation,” many files could not be assessed with regard to the clinical work performed. A lack of information gathering at the initial referral was noted. Few clients or collaterals were interviewed face-to-face by the worker receiving the initial complaint. Client contact at the point of referral was found to be “generally sufficient,” but it became inadequate after the first few weeks of the file. There was not a consistent process of investigation, assessment, or risk decision-making followed by staff. Overall, case documentation was found to be “seriously deficient.” Recommendations included training on case documentation and agency policy and procedures.

In cases where children had been ordered in need of protection by a court and the agency was ordered to supervise care, the level of service was superior to that in other cases. However, in several cases, lack of contact with the child placed the agency at risk of legal action for “failing to supervise.” Of the general protection cases, the cases opened and closed at intake that were reviewed were very well managed. The cases reviewed that were opened by the Intake Unit and transferred to the Protection Unit were adequately serviced and documented at the onset but became deficient once transferred. The Dawson Report recommended that the assistant director review all court-ordered supervision cases, implement policies for management of these cases, revise policies on case documentation, identify and monitor the status of all cases, and review intake systems.

The Report also recommended that the assistant director implement a system to identify and monitor the status of all case recording on a monthly basis and that the agency revise its policies on case documentation and review its intake systems.

Bill Carriere was involved with the implementation of some of the recommendations made in the Dawson Report. He noted that there “definitely was an impact” on how the CAS performed investigations as a result of the Report.

Richard Abell confirmed that the position of clinical director was created as a result of a recommendation in the Dawson Report. The clinical director position was meant to bring together all of the services being provided by the CAS. The Review had identified concerns about coordination and oversight of the service delivery system, and it was felt that the new position would assist in addressing these concerns. Mr. Abell was hired as the first clinical director for the CAS of SD&G in late 1989. As clinical director, he had "ultimate responsibility for service delivery." He reported directly to the executive director.

Mr. Abell was involved in the implementation of strategies recommended in the Dawson Review. He commented that the difficulties identified in the Report were "not unique" to this CAS. Mr. Abell noted substantial changes to both policies and procedures as a result of the Dawson Review. He observed an emphasis on systems and procedure to ensure that necessary steps at all stages were identified and carried out. A new and "very extensive" documentation system was also introduced and there were changes in staffing.

It is unfortunate that it took such a horrific case before a comprehensive review of the policies and procedures of the CAS SD&G was undertaken. The Dawson Review was conducted some twenty years ago. The deficiencies it noted may explain to some extent some of the failings of this institution in cases that I will comment on later in this chapter. I have heard evidence and reviewed documents that suggest that, since the time of the review, policies, procedures, and protocols have been updated, modified, or drafted and adopted. I recommend that an internal review mechanism be put in place to ensure that these policies, practices, and protocols are subject to a comprehensive review on a regular basis so that amendments are not simply a reaction to disturbing cases.

The Cieslewicz Foster Home

Dora and Hans Cieslewicz applied to become foster parents on November 12, 1972. A foster home investigation was conducted by Mary Gratton, who was a foster home finder for the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G), and the first child was placed in their home on January 5, 1973. Their home remained a foster home until November 14, 1977, when it was made a receiving home. A foster home receives children through the CAS in a planned manner. Foster parents are contacted and the case is discussed with them prior to the child coming into the home. It is a very systematic process. A receiving home is different. It receives children who are taken out of a crisis situation. They stay for a short period of time until they can be placed into the care of a foster home. The stress level and degree of flexibility

required by the family is much greater in a receiving home than a foster home. Bryan Keough, who worked for the CAS of SD&G as both a child protection worker and a childcare worker for nineteen years, testified that he expected that there would be higher standards or requirements for receiving homes than for foster homes.

The Cieslewicz receiving home was closed effective November 18, 1977, after the Cieslewiczs resigned. This resignation followed a number of sexual allegations made against Mr. Cieslewicz by several girls who were placed in the home.

Allegations of Sexual Abuse Against Hans Cieslewicz

On September 22, 1978, case worker Françoise Lepage made an entry in the Cieslewicz foster home case file indicating that several teenagers who had spent time in this home had made allegations of a sexual nature against Mr. Cieslewicz, including C-77, C-78, C-79, and C-76. Some of these allegations had been made five years prior to this recording and were never investigated.

C-77's Allegations

C-77 was adopted in 1964. On September 24, 1973, C-77 attended at a police station with her brother and complained that her adoptive father had been molesting her. She was admitted to the care of the CAS of SD&G after refusing to return home and was placed in a receiving home the same day. C-77's adoptive father eventually admitted that he had made advances towards her on several occasions, although her case file indicates that her case worker, Cam Copeland, felt that C-77 was not totally innocent in these episodes.

C-77, born on August 2, 1958, was placed in the Cieslewicz home on October 19, 1973, and she remained there until November 15, 1973. Françoise Lepage became C-77's worker in June 1975. As noted, Ms Lepage's September 22, 1978, entry in the Cieslewicz foster home files indicated that several teens had made allegations against Mr. Cieslewicz, including a complaint from C-77. She had complained to Ms Lepage that Mr. Cieslewicz had fondled her breasts. The date of this complaint is not noted. Ms Lepage wrote that the complaint was not investigated because C-77 was known to lie frequently. The allegation of sexual abuse was first recorded in the foster home file in September 1978. There is no record of it in C-77's child file.

On October 27, 1973, Ms Cieslewicz left the home with two of the foster children, leaving C-77 and another foster child in the care of Mr. Cieslewicz, and went to her daughter's home in Montreal. The reason provided at the time was that she had a disagreement with her husband about the teenagers in the home not

assisting with the house cleaning. Given the timing, it is natural to wonder whether the departure of Ms Cieslewicz from the home had anything to do with C-77's allegations. As will be discussed below, Ms Cieslewicz once again temporarily left the home with the children approximately two and a half years later because of allegations of sexual molestation made by a foster child against Mr. Cieslewicz.

C-77 was moved from the home on November 15, 1973. According to C-77's file, the placement in the Cieslewicz home broke down because of C-77's stealing and her inability to get along with other adolescents in the home because of her arrogance and attitude of superiority.

C-78's Allegations; Ms Cieslewicz and the Children Leave the Home

C-78 was born on May 17, 1961, and came into the care of the CAS of SD&G on May 27, 1967. At the time of her admission, she was diagnosed as suffering from a convulsive disorder, mental sub-normality, and secondary behaviour problems. C-78 was placed in the Cieslewicz home on February 23, 1976. Shortly thereafter, C-78 complained to Ms Cieslewicz that Mr. Cieslewicz had asked her to remove her sweater and bra in order to ensure that she was physically in good condition. She complied and, after he had finished looking, Mr. Cieslewicz left the room. Ms Cieslewicz questioned her husband about the incident, and he responded that the girl was lying.

On March 9, 1976, Ms Cieslewicz attended at the CAS office to meet with Bryan Keough and request his advice about the situation. She advised Mr. Keough that her plan was to immediately move out of the home with the children, explaining to them that she and her husband were having marital problems and were giving each other time to think things over. Mr. Keough thought this was a feasible plan, and he assured Ms Cieslewicz that the children would not be removed, on the condition that she remained apart from her husband until the situation was resolved. Mr. Keough discussed the situation with supervisor Dave Devlin and acting director Angelo Towndale. They approved of the proposed manner of dealing with the situation.

That day, Ms Cieslewicz took the foster children and her natural daughter and moved to her daughter's home in Apple Hill. She returned to the home with the three girls on March 15, 1976, after C-78 retracted her allegations and admitted that she had lied. Despite the retraction, Mr. Keough was still not satisfied and so he undertook to complete an investigation. Mr. Keough advised Ms Cieslewicz that he still had to conduct an investigation into the matter. This proposed step was approved by Mr. Towndale. Bryan Keough met Mr. and Ms Cieslewicz on March 25, 1976, and reached the following conclusion:

It is possible that the above may have occurred, however, if so, I doubt if it ever will again. Mr. Cieslewicz denies it right down the line, and because of the tremendous asset this home has been to our agency in the past, I believe the man should be given the benefit of the doubt. I therefore recommend that this home remains [sic] open.

Mr. Towndale reviewed and initialled Mr. Keough's recording about the investigation. He explained that, at the time, in the 1970s, there was a tendency not to believe children.

On March 26, 1976, C-78 was removed from the home. Had she not been removed, Ms Cieslewicz would have requested her removal due to her misbehaviour.

Bryan Keough did not recall any discussion about contacting the Cornwall Police Service or the Ontario Provincial Police about C-78's allegations. He testified that, had this allegation happened today, the police would be contacted. It does not appear that Mr. Keough interviewed anyone else except the Cieslewiczs. The only reference to another foster child being asked about these allegations or about Mr. Cieslewicz more generally was in Ms Lepage's recording in September 1978. She wrote that Mr. Keough said that C-76 had initially supported C-78's allegations but she had later withdrawn her statement. Mr. Keough testified that, at the time, CAS workers did not have training on how to deal with allegations of sexual abuse. He testified that, if this situation had arisen in the 1980s, when workers had received some training, the matter would have been handled differently.

Complaint About the Care of C-78

After being removed from the Cieslewicz home, C-78 was placed in the Anson Group Home in Minden, Ontario, on March 29, 1976. In early 1978, David Phillips, the director of the Anson Group Home, wrote a letter to the Child Welfare Branch of the Children's Services Division of the Ministry of Community and Social Services concerning the treatment of the CAS wards while in foster care, including C-78's treatment in the Cieslewicz foster home. As a result, Tom O'Brien, the executive director of the CAS of SD&G and Dave Devlin met with Robert Penny, a supervisor with the Child Welfare Branch, on February 14, 1978, to discuss this matter. Notes describing the meeting indicate that Mr. Penny was told that the allegation made by C-78 had been investigated, that the CAS could neither prove nor disprove the accusation, and that C-78 had been removed from the home. Mr. Penny was also advised that C-76, another ward living in the home at the time, had never suggested that Mr. Cieslewicz had made any improper advances against her. The notes conclude that Mr. Penny seemed satisfied with the explanations provided.

C-79's Allegations

C-79, aged fifteen, was picked up after running away from a group home in Quebec and was placed in the Cieslewicz home on September 16, 1978, for two nights. C-79 told workers Françoise Lepage and Cam Copeland that Mr. Cieslewicz had come to her bedroom on both nights that she was in the receiving home. On the first night, Mr. Cieslewicz touched her breast but did nothing else once she indicated she would not cooperate. On the second night, Mr. Cieslewicz came to her bed and indicated that he wanted to have sexual intercourse with her. She refused and then practised oral sex on him for a short period of time before he masturbated and ejaculated on her abdomen. C-79 wiped the semen from her abdomen with the sleeve of her blouse. Workers at the interview held the next day observed that a substance had dried on her sleeve. According to the recordings, these allegations were given some consideration, but, in view of her bad reputation, they were not investigated. It was decided that, should another allegation of a sexual nature be made against Mr. Cieslewicz, the matter should be given serious consideration.

Bryan Keough did not recall being at the interview. Although he heard about this allegation in September 1978, he did not consider removing C-76, the foster girl he was responsible for in the home. Mr. Keough testified that, had this same scenario occurred in the 1980s, it would have had far different results:

... I'm not seeking to excuse anybody.

We had not been given any training in child sexual abuse. We had no idea about what indicators to look for. We all had high case loads.

And like I said yesterday, we made mistakes, but none of those mistakes were "intentional." We were trying to do the best that we could.

Although I appreciate that the training and resources available in the 1970s were not the same as they were subsequently, in my view the way in which these girls' allegations were dismissed was inexcusable, even in the 1970s. This is especially so given that, in the case of the third girl, C-79, there was potential physical evidence of the abuse and still no steps were taken to investigate the matter. To simply say that it was a different period of time is not acceptable. The sexual molestation of young girls by adults in positions of trust and responsibility has never been accepted in our society. The fact that three girls had come forward with allegations should have led to an internal investigation by the CAS as well as a police investigation.

C-76 Comes Forward With Allegations

C-76 was born on October 16, 1960, and entered the care of the CAS of SD&G on November 22, 1968. She was placed in the Cieslewicz foster home on July 26, 1973, and remained there until October 20, 1978. C-76's case file indicates that she was a child of below-average intelligence and was considered by the CAS to be "a trainable retardate with an I.Q. of 59."

On October 16, 1978, C-76 confided to her worker, Bryan Keough, that Mr. Cieslewicz had been involved sexually with her for some time but that this did not include sexual intercourse. She told Mr. Keough that the abuse involved fondling and usually happened when she was going to the barn to help him with chores. According to Mr. Keough, this allegation is what closed the foster home. It was the fourth allegation of sexual abuse against Mr. Cieslewicz. On the same day, Ms Cieslewicz wrote a letter to CAS Executive Director Thomas O'Brien indicating that, effective November 18, 1978, she would be closing her receiving home.

According to the file recording, on October 19, 1978, C-76 accused Mr. Cieslewicz, in the presence of Ms Cieslewicz, of having sexual play with her, which he denied. Mr. Cieslewicz called Bryan Keough on October 20, 1978, and requested that C-76 be removed from their home. She was removed on the same day.

I question why C-76 was not removed from the home by Bryan Keough on October 16, 1978, after she alleged that she had been abused by Mr. Cieslewicz. In my opinion, she should have been removed immediately or steps should have been taken to ensure that Mr. Cieslewicz would not be alone with her until an investigation could be conducted. It does not appear from the file recordings that Mr. Keough discussed that matter with the Cieslewiczs prior to C-76 making an accusation against Mr. Cieslewicz on October 19, 1978.

The CAS Report to the Child Welfare Branch and Meeting With the Crown Attorney

On October 25, 1978, Mr. O'Brien wrote to Mr. and Ms Cieslewicz acknowledging receipt of Ms Cieslewicz's letter of October 16, 1978, and thanking them for their help and for the tenderness exhibited towards the children.

Following a discussion between Angelo Towndale and Robert Penny, a field consultant with the Child Welfare Branch, on or around October 31, 1978, Mr. Penny wrote a letter to Mr. O'Brien. He indicated that the Child Welfare Branch was very concerned about the events that had apparently taken place at the Cieslewicz home and thought that the Crown Attorney's Office should be "fully involved at the earliest possible date."

Mr. Towndale testified that the CAS was reporting to the Ministry to keep them informed and ask for advice. The Ministry suggested that the CAS report to the Crown and did not suggest reporting to the police. According to Mr. Towndale, the Crown, in a subsequent meeting, also did not suggest reporting to the police.

On October 31, 1978, Mr. O'Brien wrote to Barry Dalby, the director of Child Welfare, Child Welfare Branch, providing a report on the Cieslewicz receiving and foster home and describing the four complaints of sexual abuse made against Mr. Cieslewicz over the years. He characterized the three complaints prior to C-76's coming forward as follows:

... The first girl who made an allegation against the foster father was not only promiscuous but had made allegations of the same nature against her own father. She was also mildly retarded and known to be a compulsive liar.

The second complaint was a severely retarded adolescent girl ... When this complaint was brought to our attention, the worker assigned to this home immediately investigated. Mr. Cieslewicz denied the allegations ... We also learned at this time that the complainant had previously made allegations of this type against staff and residents of past placements, including our own staffed group home.

...

The fourth complaint came from a ward of the Province of Quebec who had run away from a group home in St. Hyacinthe, and was placed in the Cieslewicz home for two days ... She was questioned at our office but we had doubts as to her credibility since she had quite openly made sexual advances while in the car towards the male worker who apprehended her. During the investigation she related very casually many sexual experiences she had had in the past.

Mr. O'Brien testified that he had received the information to write this letter from Françoise Lepage. In fact, he testified that she wrote the letter and that he read and signed it. Mr. O'Brien did not recall meeting with any of the girls before writing this letter and did not think he should have because he knew the case worker very well and had full confidence in what she told him.

Mr. O'Brien agreed that the letter was not as complete as it ought to have been. For example, the letter did not state that the allegations C-77 had made

against her father had been admitted to by her father. This was, in my view, a serious omission. He acknowledged that, with respect to the allegation of C-79, the fact that there had been potential physical evidence of that abuse should have been included in the letter. Mr. O'Brien testified that he had not been aware of the existence of this physical evidence. The tenor of the letter appears to be more accusatory towards the four alleged victims than towards the alleged perpetrator.

The letter to Mr. Dalby noted that a meeting had been held with the workers involved with the home, and the result was that the Cieslewicz home was to be closed as a receiving home. Mr. O'Brien further advised that he would be meeting with the Crown attorney later that day.

A meeting took place on October 31, 1978, between Crown Attorney Don Johnson, Assistant Crown Attorney Guy DeMarco, Tom O'Brien, Angelo Towndale, and Bryan Keough. According to a letter Mr. O'Brien wrote to Mr. Dalby the following day, after considering the facts presented by the officials of CAS of SD&G, Mr. Johnson was of the opinion that there was insufficient evidence to proceed with any charges against Mr. Cieslewicz. Mr. O'Brien further clarified in this letter that the Cieslewicz home had been closed as both a receiving home and as a foster home.

This is another instance in which Mr. O'Brien met with the Crown attorney instead of contacting the police. Mr. O'Brien explained that the reason he went to the Crown attorney so often was because he knew him both professionally and personally and had a lot of respect for his knowledge and professionalism. He testified:

Cornwall then and now is still a small community in terms of population and for years we only had one Crown Attorney and I knew them all.

And when it came to a matter of wanting to understand the law better to make sure I was doing what I should have been doing, I would discuss it with the Crown Attorney and, as I said before, if the Crown felt that I should be going to the police they would tell me in no uncertain terms.

In hindsight, Mr. O'Brien remained comfortable with the decision to go to the Crown rather than referring the matter to the police to conduct an investigation.

As I have previously indicated, all allegations of sexual abuse brought to the attention of the CAS should have been reported to the police, regardless of whether the Crown attorney recommended that the police be contacted or not. I note that, today, the 2005 Foster Care Policy provides that, if a serious occurrence is reported, the police are to be notified if appropriate. In my view it is always appropriate to report the matter to police if the serious occurrence is an allegation of sexual abuse. I discuss the role of the Crown attorney in this matter in Chapter 11, dealing with the institutional response of the Ministry of the Attorney General.

The Cieslewicz Home Is Closed

The closing summary for the Cieslewicz home was prepared by Françoise Lepage on November 1, 1978. The summary indicated that, over the years, the CAS had received four complaints of a sexual nature against Mr. Cieslewicz and that this was one of the negative aspects of the home.

The response of the CAS to the allegations of sexual abuse at the Cieslewicz foster home was entirely unacceptable, even by the “standards” of the 1970s. Before considering this issue in more detail, I wish to make some comments about how the Cieslewicz home was operated and supervised, as I feel there were some problems in this regard that could have contributed to the lack of knowledge CAS workers seemed to have about alleged incidents in the home.

There were a number of children placed in the Cieslewicz home who had different CAS workers. At one point, there were as many as three child protection workers involved—Bryan Keough, Françoise Lepage, and Cam Copeland. Mr. Keough testified that, at the time, there were no meetings among the workers who had children in the same home. These circumstances can lead to one worker not being aware of information another worker has about the situation in the home. This potential problem was exacerbated in this case by the fact that there was a gap in the recordings in the foster home file between 1973 and 1976. Each foster home has a file and each child also has a file. In this case, the foster home file did not contain any recordings between November 21, 1973, and April 6, 1976. When asked about this, Angelo Towndale testified that he had no explanation for the gap but thought it might have occurred due to a lack of resources. It is critical that foster home files be kept up to date, especially when there are various workers involved with children in the home. This will allow each worker to review the foster home file and have a firm understanding of what has been occurring in the home.

There were four allegations of sexual abuse made against Mr. Cieslewicz before this home was closed. Only two of these allegations led to any investigation by the CAS. The other two were dismissed as a result of the reputation and perceived dishonesty of the complainants. At the conclusion of the first investigation, which did not result in the home being closed, Bryan Keough placed a lot of emphasis on what an asset the Cieslewicz home had been to the CAS of SD&G over the years. He denied, however, that any cost-benefit analysis had been done such that, regardless of whether the sexual abuse had occurred, the home would stay open because it was too valuable for the CAS to close it. Tom O'Brien also disagreed with the suggestion that the allegations of the girls in the foster home were not heeded because the CAS could not afford to lose the foster home. Rather, he testified:

Our problem with the children coming to us about certain allegations was over the years you found from experience that certain children lied for various reasons; one in a petty way to get back at the foster parents for something; one is to—another one would be to get the Agency to move them into another home that they think they might like better than the one they're in ... [A] lot of these children were somewhat disturbed, so you couldn't always have the confidence in what they were saying that you would like to have. That doesn't mean that they didn't tell you the truth but it's hard to be clear in your mind.

In my opinion, although there were resource issues that may have contributed to a reluctance to close a foster home on the basis of allegations of abuse, the primary reason for the result in the Cieslewicz case was a tendency to disbelieve the complainants. Angelo Towndale testified that, in the 1970s, the tendency was not to believe children. I heard from a number of CAS witnesses that, in the 1970s, it was not believed that sexual abuse happened and that these foster children were thought to be “troubled,” with a tendency to lie. I accept that this attitude has changed, and I understand that a situation such as what occurred at the Cieslewicz home would be handled very differently today.

According to Mr. Towndale, in the 1970s, it was also not the practice to report these types of incidents to the police and, in this case, the Ministry had advised the CAS to go to the Crown attorney. Mr. Towndale testified that the CAS should have seen this as a police matter; however, he felt that the Crown attorney had an obligation to advise the CAS on how to deal with the situation properly.

As I said earlier, even by the standards of the 1970s, the institutional response of the CAS of SD&G to allegations of abuse against young people was seriously deficient. The CAS as an institution, Executive Director Tom O'Brien, and Françoise Lepage all failed to investigate sufficiently or delayed in investigating allegations, obtaining information, or noting indications of abuse of young people involving Hans Cieslewicz. In addition, the CAS, Tom O'Brien, and Françoise Lepage failed to take or delayed in taking appropriate actions to ensure that young people would not be at risk of abuse from Hans Cieslewicz. In addition, the CAS failed to advise or delayed in advising proper police authorities of allegations or information relating to abuse of young people involving Hans Cieslewicz, and it failed to offer and/or provide sufficient counselling, assistance, and support to alleged victims of abuse involving Hans Cieslewicz.

Roberta Archambault and the Lapensee Group Home

Roberta Archambault (née Judd)²⁹ was born on May 15, 1965, the youngest of seven children. She and her siblings were brought into the care of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) in 1970, when she was five years old. Ms Archambault was admitted into care on September 3, 1970. She became a permanent ward of the Crown in 1972, when she was seven years old, and remained in the care of the CAS until she was nineteen.

Ms Archambault lived in a number of foster homes growing up. She lived in the Hubert foster home for ten years, the Lapensee group home for a couple of years, briefly at the Lalonde home, and finally the deRonde home. She alleged that she was physically, mentally, and sexually abused while in the care of the CAS.

Roberta Archambault in the Hubert Foster Home

Ms Archambault and her older sister were placed in the foster home of Hannah and Boleslaw Hubert, located in Morrisburg, Ontario, on September 3, 1970. Roberta was five and her older sister Jennifer was eight years old. The Huberts had one young child and two adolescent children of their own living in the home. During the ten years that Ms Archambault lived in the Hubert home, a number of foster children were placed there, although none for as long as Roberta and her sister.

Ms Archambault alleged that she was verbally, physically, and sexually abused in the Hubert home. She knew something "had to be wrong" on the first day when, upon arrival at the home, she and her sister were taken upstairs to the bathroom and stripped down in front of a few members of the family, bathed, and washed with anti-lice soap. Ms Archambault testified that even at the age of five she thought it was degrading to have a bunch of adults watch her bathe.

Ms Archambault testified that the verbal abuse began after the first Christmas, when the Huberts began insulting her in Polish and German. Although she could not understand the languages, she came to understand later on that they were insulting her. Roberta was told that she was excess baggage and was there only because she and her sister were a package deal and they wanted a sibling close to their daughter's age to grow up with her. According to Ms Archambault, the physical abuse started the first summer they lived there, in 1971. She testified that

29. For purposes of clarity and consistency, I will refer to Roberta Judd Archambault as Roberta Archambault or Ms Archambault throughout this section.

she and her sister were not allowed to talk to each other, and, if they were caught talking, Roberta would get beaten and her sister would have to watch.

Ms Archambault testified that she was physically abused by Mr. Hubert regularly and that Ms Hubert began to beat her when she was about eleven years old.

Ms Archambault also recalled being sexually abused by Mr. Hubert beginning when she was seven or eight years old. She testified that this recollection came to her recently:

I've had nightmares all my life and I haven't slept at night all my life until the early hours in the morning, and it was just recently, about two months ago, two and a half months ago, that I figured out what it was. It was like a mental block just undone.

She testified that the sexual abuse occurred in the summer when Mr. Hubert took her fishing and also in the garage during the winter. According to Ms Archambault, the abuse stopped shortly before she left the Hubert home. She testified that the only person who might have suspected she was being sexually abused was Ms Hubert: "For some reason she started hitting me in the stomach and telling me she made damn sure I never reproduced."

Ms Archambault testified that, when she was eleven years old, she tried to commit suicide by taking pills after Ms Hubert denied her the opportunity to spend the weekend with one of the Huberts' sons in Cornwall. Ms Archambault felt that Ms Hubert's son and his wife, whom she said were estranged from the Huberts, liked her and she thought they would "rescue" her. She testified that the Huberts and their son had a falling out over her treatment in the home. According to Ms Archambault, she was taken to the hospital and was there for two to three days. She said nobody asked her what caused her to pass out or if she had ingested any substances. However, she assumed the Huberts knew what happened because, when they returned from the hospital, there was a lock on the bathroom cupboard. Ms Archambault later learned that the Huberts said the episode was a result of a cheerleading accident.

Interaction With the CAS While in the Hubert Foster Home

Roberta Archambault had a number of CAS workers while at the Hubert foster home. She testified that, although a worker attended at the home from time to time and asked how she and her sister were treated, they could not say anything because the Huberts were in the next room and could hear everything that was said. She testified that she knew when the CAS worker was coming, because the Huberts would tell her to clean up and would put her in suitable clothes instead of the rags she usually wore. She recalled that the CAS worker never came unexpectedly.

Ms Archambault testified that she did not tell any CAS worker about the verbal or physical abuse by the Huberts until she was in high school. This will be discussed further below.

Bryan Keough was Roberta Archambault's CAS worker from July 1972 until she left the Hubert home in December 1980. He testified that, when he visited foster homes, he would meet with the foster parents or mother alone, followed by a meeting with the child alone and then a meeting with the parents and child together. The intent was to have the meetings with the child out of earshot from the foster parents. In my view, meetings with the child in the foster home are not effective, as the child cannot be certain he or she will not be overheard by the foster parents.

At the Inquiry, Ms Archambault recommended that every child in foster care should be questioned outside the home and should be told that they can say something if they are in danger and that they will then not be sent back to that situation. I agree. I recommend that the CAS require workers to conduct meetings with children in a location outside of the foster home, such as at school. Ms Archambault also noted that all visits by workers were scheduled, and she recommended that the CAS make unannounced visits. She testified that "[a]nybody can put on a show. You can clean up your house. You can clean up your children. You could tell them what they can and cannot say." Again, I agree. Ian MacLean, who was the director of Residential Services for a number of years, testified that steps are being taken by the CAS of SD&G to introduce unscheduled visits to begin in the fall 2009. He suggested that a recommendation be made to the Ministry of Children and Youth Services that Children's Aid Societies include in their service agreements with foster parents the requirement of unscheduled visits by workers to foster homes. I agree with this recommendation, and I support the initiative of the CAS of SD&G to introduce unscheduled visits prior to it becoming a Ministry requirement.

As required, Bryan Keough kept detailed recordings of Roberta's progress at the Hubert home. He agreed that from 1972 to 1973 there did not appear to be any concerns with her, but that by 1976 there had been a change and he had noted some concerns. For example, in an annual summary prepared in April 1976, Mr. Keough noted that Roberta had a "short attention span with possible problem areas as follows; lying, ... manipulative, and outright bullheaded at times." Mr. Keough testified that he was not aware of any suicide attempt by Ms Archambault. Although he had noted in the case file that she was admitted to hospital on October 6, 1976, he could not recall the incident or whether he had any concerns about it at the time.

In later entries, Mr. Keough noted possible sexual behaviour. In particular, he made the following comments:

She has a fair attention span with problem areas as follows: lying, stealing, possible sexual misbehaviour, manipulative, very selfish and self-centred at times.

She has severe anger outbursts, mood changes, manipulative, jealous, possessive, smokes heavily, but always has money and possibly promiscuous.

These recordings were made in 1980. The first comment was made in an annual summary that covered the period of time from October 1978 to October 1980, and the second comment is in a transfer summary recorded in November 1980. Roberta Archambault was then thirteen to fifteen years old. Mr. Keough testified that he could not recall what these comments referred to and that he likely made them based on information received from the Huberts. Mr. Keough did not think at the time that Ms Archambault's behavioural problems could be indicators of physical or sexual abuse. He thought she was just experiencing the trauma one would expect a child to experience when he or she is taken from the natural family and placed in a foster home.

In my view, observations of sexual misbehaviour or promiscuity with respect to a thirteen- to fifteen-year-old youth warrant at least some investigation, including speaking to the child in question. I also note that, at the time, Roberta Archambault had been in the care of CAS for ten years and had not recently been apprehended. I also expect that Mr. Keough, who had been her worker since 1972, would have developed a relationship with Ms Archambault and should have been able to observe a change in her character. Behaviour changes can be a product of growing up, and we cannot always assume there is something negative behind them. However, it is incumbent upon CAS workers to recognize the signs of possible abuse and to ask the appropriate questions to determine whether abuse is a factor. My recommendations above about meeting with foster children outside of the foster home and making unscheduled visits should help in this regard. Mr. Keough did not have a specific recollection of the events that would explain his comments. Perhaps case recordings should include more details of the supporting facts and observations when drawing inferences relating to sexual conduct.

Disclosure of Abuse to a CAS Worker

Roberta Archambault testified that, when she was in grade 10, she called Bryan Keough from school one day and that he came to speak with her at school. She said they met in Mr. Keough's car in the school parking lot once or twice a week for two or three months and she told him about the verbal and physical abuse

by the Huberts and about her suicide attempt. Ms Archambault also said she told Bryan Keough that every Sunday while she was dusting the Huberts' bedroom, Mr. Hubert was in the room cleaning his shotgun and he would put the gun to her head and say he could shoot her and bury her in the backyard and nobody would look for her. According to Ms Archambault, Mr. Keough said he would look into it; she said that was his response to everything she told him. Ms Archambault recalled that Mr. Keough was constantly writing in his books and flipping pages during their meetings. She thought he was taking notes of what she said.

Ms Archambault testified that Mr. Keough told her he would get her out of the Hubert home; she could not understand why it was taking so long. She said that, after speaking with Mr. Keough the first time, she packed her bags and Ms Hubert had unpacked them.

Ms Archambault did not tell the CAS worker about the sexual abuse by Mr. Hubert. She testified she had "blocked that from myself."

Bryan Keough denied that Roberta Archambault told him about any abuse in the Hubert home or that he met with her at school two to three times a week for several months. He explained that the CAS would have received a call from the school because the school would have "frowned upon" a child being removed from the school for that amount of time. Mr. Keough did not recall Ms Archambault telling him that she had attempted to commit suicide or that Mr. Hubert had put a shotgun to her head; nor did he recall her showing him bruises or marks on her body. Mr. Keough testified that, had she told him she had been abused in the Hubert home, he would have put the information in his case recordings. There is no reference in the recordings prepared by Mr. Keough of Roberta Archambault advising him that she was physically abused by the Huberts. I have already recommended that case recordings should perhaps be more detailed. In light of the issues that arose here, recordings should also always note the location of the meeting or interview.

Removal of Ms Archambault From the Hubert Foster Home

According to the file recordings, in April 1980, the Huberts requested that Ms Archambault be removed from the home, but she requested that she not be moved immediately due to her school year and the Huberts agreed that such an interruption at that time could do her harm. According to the notes, Roberta was given several alternatives, including immediate removal if the situation in the home broke down or staying until the end of July if she behaved. Ms Archambault testified that Mr. Keough gave her the option to move immediately or stay until the end of the school year and that she told him she wanted to leave immediately. This is inconsistent with the case recordings, which

indicate that, in August 1980, she requested that she be allowed to stay in the Hubert home.

In the fall of 1980, the situation in the Hubert home began to deteriorate again and Ms Archambault was removed from the home in December 1980.

Roberta Archambault Is Placed in the Lapensee Group Home

Roberta Archambault was transferred to the Lapensee group home in December 1980. She was fifteen years old. With the exception of a short period of time during which she tried living with her natural mother, Ms Archambault lived at the Lapensee home until the spring of 1983.

There were seven other foster children at the Lapensee home—five girls and two boys. The Lapensees also had two sons and three daughters of their own. When Ms Archambault first moved to the Lapensee home, they had a farmhouse where everybody lived. Shortly after, they purchased a residence in Martintown, which became the girls' group home. The boys stayed at the farmhouse. Mary Miller was the CAS worker responsible for the children in the Lapensee home. Ian MacLean was her supervisor.

There was a Placement Committee meeting on December 17, 1980, during which Roberta's file was reviewed. Present at the meeting were Ms Archambault's former worker Bryan Keough, Mary Miller, Ian MacLean, the Lapensees, and another CAS worker, Karen Clarke. Mr. MacLean testified that the references in the case file to sexual misbehaviour and possible promiscuity were discussed during the meeting. His role as supervisor was to ensure that the new worker took these issues into consideration and tried to deal with them. Mr. MacLean did not recall any discussion about obtaining a psychological assessment of Ms Archambault in light of some of the issues raised in the case notes. He testified that, in hindsight, it would have been prudent to arrange such an assessment.

The intention was that Roberta Archambault would be in the Lapensee home only temporarily and that she could then return to the Hubert family. However, within three months of her arrival she "adamantly refused" to return to the Hubert foster home. Mr. MacLean could not recall if Ms Miller explored with Ms Archambault why she was so adamant about not returning to the Hubert home.

Disclosure of Physical Abuse at the Huberts

Ms Archambault testified that she told the Lapensees about the physical abuse at the Hubert home, including the incident of Mr. Hubert holding a shotgun to her head and specific injuries she received to her hands and her nose. She testified that Mary Miller also knew about the shotgun incidents. There is no indication in

the recording of either the Lapensees or Ms Miller being advised of these events. Mr. MacLean could not recall it being brought to his attention that Ms Archambault had disclosed physical abuse at the Hubert home to the Lapensees and Ms Miller.

Sexual Abuse by Brian Lapensee

After moving into the Lapensee group home, Ms Archambault was introduced to one of the Lapensees' sons, Brian. She thought he was around twenty-one years old. He lived at the Lapensee farmhouse, where Ms Archambault spent some of her weekends. She testified that, during her first weekend at the farmhouse, another foster girl told her that Brian Lapensee had been touching her inappropriately.

At one point, less than three months after she arrived at the house, Ms Archambault found herself the only female foster child left at the home over the weekends. She testified that the Lapensees started offering her a glass of wine and asking her to cook something:

And the thing was to cook something in the kitchen, you would have to leave the living room and he was always in the kitchen by the wood stove drinking, Brian Lapensee. It was basically a set-up. They never watched him. They knew what he was doing. They just turned a blind eye.

Roberta Archambault alleged that Brian Lapensee fondled her, and there was oral sex, and this took place when she was fifteen or sixteen years old. She said she never had sexual intercourse with him because she "didn't want to end up being one of the girls that got pregnant." She had heard about other girls who got pregnant and was told by one girl that she had been taken to Montreal for an abortion when she was fourteen years old.

According to Ms Archambault, she did not tell Brian Lapensee's parents because she had been told by one of the daughters that this was the last foster home for her, and she felt the mother, Alice Lapensee, would do anything to protect her son.

On August 31, 1982, Ms Archambault moved in with her natural mother in Crystal Beach, Ontario. She returned to the Lapensee home on December 2, 1982. Shortly before Roberta returned to the home, allegations of sexual abuse were made against Brian Lapensee by other girls in the home, and the CAS conducted an investigation.

*CAS Investigation Into Allegations Against Brian Lapensee,
November–December 1982*

On November 30, 1982, Mary Miller reported to Ian MacLean that one of the female foster children in the Lapensee home had alleged that Brian Lapensee was sexually molesting her and other girls in the home. It was decided that the CAS would conduct a full investigation into the matter, and Mr. MacLean and Ms Miller interviewed all the girls in the home, Brian Lapensee, and Mr. and Ms Lapensee later that day. In addition to the original complainant, three other girls alleged that Brian Lapensee had sexually molested or made sexual advances towards them.

During their interview, the Lapensees advised the CAS workers that Brian Lapensee was not allowed in the group home and the girls were not allowed at the farmhouse. They admitted, however, that Brian and a male ward named Donald would drop by the group home occasionally to pick up their dinner but that the visit was brief and they were watched carefully. They also mentioned that Brian Lapensee had slept over at the home when the girls had been at the farmhouse on one occasion. Ian MacLean explained that there was approximately four to five kilometres between the group home and the farmhouse and that Brian Lapensee was living at the farmhouse.

Brian Lapensee denied having any physical or sexual contact with the girls and stated that he felt his previous involvement with a ward in his parents' home, which will be discussed below, allowed him to be set-up by the other girls even if he had not done anything. He advised that he was leaving that night to move to Toronto.

Following the investigation, Ian MacLean prepared a serious occurrence report. A serious occurrence report refers to a report of an incident that has to be reported to the Ministry. The use of the term is not dependent upon the seriousness of the situation. There is a long list of situations where a serious occurrence report is sent to the Ministry.

The report concluded as follows:

With all the similar reports given by at least four of the girls and with Brian's past history one has to conclude that many if not all and perhaps more of these incidents did occur. How much setting up was done by the girls (who all have promiscuous backgrounds) one will never know. However, Brian has to realize that this home is a home of safety of these girls and that he under no circumstance can be involved with them. I feel I made that very clear to him.

In my view, Mr. MacLean used some unfortunate language in this report, especially in light of the fact that Brian Lapensee was twenty-one years old and the girls, who were all in the care of the CAS, were fifteen years old. I find the reference to the girls' "promiscuous backgrounds" to be inappropriate and irrelevant to determining whether or not sexual abuse occurred in the home. Mr. MacLean acknowledged that, even if an individual is promiscuous, she can still be sexually assaulted and that promiscuity on the part of the girls would not excuse Brian Lapensee's behaviour. I also find disconcerting that Mr. MacLean concluded that Brian Lapensee could not "be involved" with the girls in the home. An allegation of a consensual sexual relationship between Brian Lapensee and a female ward would in itself have been inappropriate. However, the allegation reported was an unwanted and non-consensual sexual touching and harassment. Given that this report is submitted to the Ministry and would be provided to the legal authorities if the matter were further investigated and is kept in the foster parents' file, CAS workers should be forthright and explicit in describing the behaviour that is being investigated or questioned.

The conclusion also references "Brian's past history." The CAS was aware that there had been an issue of inappropriate sexual misconduct on the part of Brian Lapensee several years earlier, as a result of which a female ward became pregnant. Mr. MacLean testified that, at the time, Brian Lapensee was not constantly living in the home but moving in and out. Each time he moved back, Mr. MacLean would meet with him and his parents and "have a very frank discussion with him that he needed to be very careful of his actions." I think it is unfortunate that Mr. MacLean was not more specific with respect to the history being referred to—again for the sake of other individuals or institutions that may have read this report and made decisions on the basis of it.

I heard evidence at the Inquiry of an incident involving the Lapensees' other son, Larry. He had a sexual relationship with a ward in the home who became pregnant and was placed in a home for unwed mothers. Ian MacLean did not know about this until the Inquiry, as none of this information was in the Lapensee file. Mr. MacLean testified that, if he had had this information in 1977, when he began developing parent-model and specialized foster homes, he might not have considered the Lapensees as candidates to run a group home. He also agreed that, given that the event in 1979 was the second time a boy from the Lapensee family had impregnated a ward entrusted to the care of the Lapensees, the home should have been closed in 1979. This is a good example of the importance of accurate record keeping and information sharing. Had Mr. MacLean had this information, it may have led to the Lapensee home being closed earlier or perhaps not even opened.

The serious occurrence report recommended three actions to be taken:

1—That a letter of warning under Section 46(c) of the Child Welfare Act be sent to Brian Lapensee and recorded.

2—That the Ministry be notified.

3—That a letter be sent to Ed and Alice [Lapensee] containing a copy of Brian's letter and recommendations: 1) that Brian never be allowed on the Group Home premises; 2) that we be notified should he move back to our area; 3) that all incidents, alleged or otherwise affecting safety or well being of a child be reported to the CAS social worker immediately as outlined in our policy; 4) that staff on every shift report in the log.

The report recommendations were all followed. Notably, there was no recommendation to contact the police. Ian MacLean testified that the matter was reported to the executive director, Tom O'Brien, as was the practice at the time. Mr. O'Brien was provided with a copy of the serious occurrence report on December 1, 1982, the day after it was completed. According to Mr. MacLean, both Ms Miller and Mr. MacLean hoped that charges would be laid. Mr. MacLean thought charges would be laid.

"Standards and Guidelines: Child Abuse" (1981) was adopted to ensure adequate and uniform service and case management in cases of child abuse by Children's Aid Societies. It provides under "Receipt of Complaint" that the "[p]olice shall be informed of complaints received of alleged child abuse according to a predetermined plan that will have been worked out jointly by the police and local Children's Aid Society." Under "Police Involvement" it says that "[a] plan shall be developed jointly by the local Children's Aid Society and the police to ensure that there is a cooperative working agreement."

Mr. MacLean testified that he was not sure if he was aware of this document prior to his writing of the report in 1982. He testified that the child protection group should have been familiar with this document in February 1981. At the time, he was in foster care and special resources. He also testified that the guidelines applicable to child abuse investigations were not followed. He was unsure what the practice was but agreed that CAS wards should not have been dealt with under a different protocol than the provincial policies and guidelines in place at the time with respect to complaints of child sexual abuse allegations.

As I will discuss further below, in my opinion one of the recommendations coming out of the CAS investigation of Brian Lapensee should have been to notify the police. The allegations were sufficient to warrant a police investigation.

When Roberta Archambault returned to the Lapensee home on December 2, 1982, she was advised by Mary Miller of the allegations against Brian Lapensee and the subsequent investigation. According to the file recordings, this information upset Ms Archambault:

This upset Bertie considerably as she denied Brian had ever made any advances towards her and also because she had returned to the GH [group home] planning that she could eventually “graduate” to the Lapensee family home and from there find a sence [sic] of family belonging.

Roberta Archambault recalled Mary Miller asking her if Brian had touched her or made any sexual advances, and she denied that any such events had occurred. She understood that Ms Miller was asking her this question because another girl had reported that Brian Lapensee had touched her. She felt that she had “failed” this girl by not telling Ms Miller what had happened; she explained, “I didn’t want to live on the streets again.”

Tom O’Brien Reports to the Ministry and Meets With the Crown

On December 2, 1982, Mr. O’Brien wrote a letter to Robert Nadon, Ministry supervisor, enclosing a copy of the serious occurrence report. Mr. Nadon was advised that there was no further risk to children, as Brian Lapensee had left the area. Mr. O’Brien also stated that, although he did not expect any action on the part of the Crown attorney or the police, he had made an appointment to meet with the Crown attorney.

Mr. O’Brien sent another letter to Mr. Nadon, dated December 6, 1982, indicating that he and Ian MacLean had met with the Crown attorney. Mr. MacLean did not know why they had gone to the Crown rather than speaking with the police first; it was not his decision. He testified that the Crown did not suggest that it was inappropriate for them to come to him rather than the police and did not recommend that the police be contacted.

The Lapensees were provided with a copy of the serious occurrence report and the two letters to Mr. Nadon in addition to a letter from Tom O’Brien dated December 7, 1982. Mr. O’Brien advised them that the matter had been discussed with the Crown attorney, who had decided that no further legal action would be taken. The Crown attorney’s role in this will be further discussed in Chapter 11, dealing with the institutional response of the Ministry of the Attorney General.

The Ministry supervisor, Robert Nadon, sent a letter to Tom O’Brien on or around December 14, 1982, indicating that he was satisfied that children in the Lapensee home were no longer at risk.

Home Not Closed, Charges Not Laid

This was not the first incident the CAS encountered at the Lapensee group home, yet the home was still not closed. Ian MacLean did not recall there being any discussion about closing the home. The fact that Brian Lapensee had moved away influenced Mr. MacLean's comfort level with respect to the home.

This group home already had two incidents in which the foster parents' sons had engaged in sexual activity with adolescent female wards. I accept that Mr. MacLean was not aware of the first incident involving Larry Lapensee. Mr. O'Brien also could not recall knowing of either incident in 1982. However, it is clear from Mr. MacLean's testimony and the serious occurrence report that the CAS was aware at the time of at least the incident in 1979 involving Brian Lapensee. In 1982, when allegations of sexual molestation were made against Brian Lapensee, an investigation led Mr. MacLean to conclude that these incidents and possibly more had occurred. Mr. MacLean testified that he was aware that what Brian Lapensee allegedly did to at least three girls in the home was possibly an offence under the *Criminal Code*. In my opinion, given these circumstances, the police should have been advised of the allegations and the home should have been closed. Even if charges were not warranted under the *Criminal Code*, the behaviour was such that this was not an acceptable home in which to place children and youth in the care of the CAS. The threshold for closing a home due to misconduct should be lower than the threshold for laying criminal charges. Any one of the incidents that occurred at the Lapensee home should have been grounds for considering closing it. More than one incident should have ensured its closure.

Mr. O'Brien, who was the executive director of the CAS at the time of these incidents, acknowledged that the information about Larry Lapensee would have been enough to close the home. He agreed that by 1982, given the earlier behaviour of the two sons, the home needed to be closed: "Knowing what I know now, I think we should have been much more thorough in our investigations and, if necessary, taken action to close the home."

Brian Lapensee Returns to the Lapensee Home

In December 1982, Brian Lapensee returned to the area and was again living in his parents' farmhouse. Tom O'Brien and Ian MacLean wrote Brian Lapensee a letter, dated December 20, 1982, in which they reminded him that he had agreed that he would leave his parents' home and have no further contact with the girls in the Martintown group home. He was advised that any further contact with any of the girls could result in serious consequences. A copy of this letter was provided to Mr. Nadon, Ed and Alice Lapensee, and Mary Miller. Mr. MacLean recalled that Brian Lapensee was in agreement and was willing to follow these conditions.

Given that it appeared that Brian Lapensee's departure from the area was a significant factor in the determination by the CAS that the wards in the home were no longer at risk, I am surprised that more aggressive action was not taken upon his return to the area to ensure that he would not pose a threat to the female wards in the group home.

Roberta Archambault Spends Christmas With the Lapensees

As the Christmas holidays approached, it was agreed that Roberta Archambault could spend two days and one night with the Lapensee family, including Brian Lapensee, over Christmas on the condition that the parents would provide constant supervision and ensure that their son was not alone with Roberta. According to the file recordings, "At that time, Bertie was unwanted by any of her family in this area and was very unhappy at having no one to spend Christmas with."

Correspondence was exchanged between Ed Lapensee and Tom O'Brien, confirming the conditions on which Roberta could join the family for Christmas Eve and Christmas Day. In particular, the Lapensees were to assume full responsibility for her during the time she was with the family in the farmhouse, and she could stay overnight in the farmhouse only when both parents were present.

As to why the CAS made the decision to allow a young female ward to spend Christmas in the Lapensee home, with Brian Lapensee present, only a few weeks after specifying that Brian Lapensee was to have no contact with female wards in the home, Mr. MacLean testified:

... We were faced with a young lady who is now 17 and-a-half, still a minor but 17 and-a-half years of age; she had been visiting her parents—her mother. That had broken down and that was quite disturbing to her.

At that point, she was in—no speaking terms, I believe, with her sister. She very desperately wanted to have family, again, as I've spoken before, and it was Christmas.

...

On the other side, I had Brian and I had the conditions that we had laid out, that I was fully aware of with the Ministry. And we made the decision, I was very much a part of that decision, to allow for the one night and two days. It was Christmas Eve and Christmas Day for her to spend, with the conditions.

Mr. MacLean was aware that allowing an arrangement to depart from the prohibitions and conditions that had been put into place three weeks prior was a major departure from the original prohibition. He did not believe that he notified that Ministry of this departure.

Roberta Archambault stayed with the Lapensees at Christmas, and there was no report of misconduct at the time.

The Easter Weekend Incident and Roberta Archambault's Second Suicide Attempt

In April 1983, Roberta Archambault attended a Lapensee family Easter dinner at a relative's house during which there was an incident that led Ms Archambault to accuse Brian Lapensee of making sexual advances towards her. This incident led to a heated family argument, and Ms Archambault spent the night with relatives of the Lapensee family. According to Ms Archambault, when she returned to the Lapensee home the following day, she was told by one of the Lapensees' daughters that she "had ruined it for everybody" and that now she "didn't have a home." Roberta Archambault testified that she "had nothing" and "had thrown it all away," so she bought some Anacin, took the pills, and went to bed "hoping not to wake up." The next morning, on April 5, 1983, she woke up not feeling very well but did not tell the Lapensees what she had done. At school, she called Mary Miller, who came to the school and took her to the hospital.

Ms Archambault testified that, on the way to the hospital, she told Ms Miller that the accusations made by the girls in 1982 against Brian Lapensee were true and that she had lied when asked about him because she "had always been able to handle Brian and his advances to her and she did not want to hurt Ed and Alice by telling them the truth." She desperately wanted to have them as a family.

According to Ms Archambault, she was told by Mary Miller that the Ontario Provincial Police (OPP) would be investigating. She believed that Brian Lapensee was charged by the police, and she thought it was strange that she was not interviewed. As will be discussed below, the OPP were never contacted about this incident.

On April 7, 1983, Mary Miller and Ian MacLean interviewed Roberta Archambault at the hospital. She told them that she had stayed overnight at the Lapensee farmhouse on April 2, 1983. This was the first time the CAS was aware that Ms Archambault had stayed at the farmhouse that night. There had been no arrangement with the CAS for this overnight visit. Mr. MacLean testified that he would have expected there to have been a request and special circumstances set up, as the Lapensees were aware that Roberta was not to stay there and that Brian Lapensee was not to have contact with female wards.

Roberta Archambault told the CAS workers that, when she woke up the next morning, Brian Lapensee was in her bedroom and made a sexual advance towards her. She then described the family party, the confrontation that ensued, and her attempt to commit suicide.

Later that day, the Lapensees were interviewed and were told there were two options. One was to close the home and the second was to ask the Ministry to conduct a review of the home and for the Lapensees to follow the recommendations laid down. Following this interview, Mr. MacLean met with Tom O'Brien, Angelo Towndale, and other CAS officials. A unanimous decision was made to close the home, but that the Lapensees would be given the opportunity to resign. Mr. MacLean could not recall why this opportunity was given to the Lapensees.

As with the incident in late 1982, a serious occurrence report was prepared by Ian MacLean. His report recommended that: the report be filed with the Ministry; the police or Crown attorney be consulted on the recommendation of Mr. Robert Nadon; a deadline for closing the group home, allowing sixty days notice, be set by Mr. O'Brien, with Mr. Lapensee being asked for a letter of resignation; and, finally, the three girls then in the Lapensee home be referred to the Placement Committee.

Although the Lapensees were asked for a letter of resignation, the CAS was going to close the home regardless of whether such a letter was received, according to Ian MacLean. The recommendation to close the home was based on the fact that the Lapensees had broken the agreement with the CAS that Brian Lapensee was to have no contact with any girls in the group home and the girls were not to stay at the farmhouse. In addition, the CAS was "not prepared to expose [their] adolescent wards to further chances of sexual harassment from Brian."

As per the recommendations, the serious occurrence report, dated April 11, 1983, was forwarded to Mr. Nadon. With respect to notifying legal authorities, the recommendation was that either the Crown attorney *or* the police be consulted. In a letter to Executive Director Tom O'Brien, dated April 19, 1983, Mr. Nadon indicated that he understood Mr. O'Brien would be consulting with the Crown attorney. Mr. Nadon did not recommend reporting to the police. As with the previous incident, Mr. O'Brien again contacted the Crown rather than the police.

Tom O'Brien spoke with the Crown attorney, Alain Ain, on April 21, 1983. The following day, Mr. O'Brien sent Mr. Ain a letter, enclosing a copy of the serious occurrence report and providing the following opinion:

While it is your decision as to whether charges should be laid, I would like to take the liberty of giving you my opinion which is that there would not be a necessity to pursue charges. I'm basing my decision on three specific items—1) the nature of the sexual advance does not seem

too serious; 2) since the advance in question was one more in a series of inappropriate advances we see it as the “straw that broke the camel’s back” and therefore decided to close this group home. The home is now closed, though because of a contract we must continue to pay until sometime in June; and 3) all girls have been removed from this group home and the licence for the operation of it has been revoked by us.

Mr. O’Brien advised Mr. Nadon in a letter dated April 23, 1983, that the Crown felt there was no point in pursuing charges against Brian Lapensee at that time.

Mr. O’Brien testified that he went to the highest source for direction, which was the Crown. He was comfortable basing his decision regarding the proper way of proceeding on the Crown’s opinion of the case, including the Crown’s opinion not to lay charges against Brian Lapensee.

In my opinion, the practice of Mr. O’Brien in going to the Crown for direction illustrates a misunderstanding of the roles of the police and the Crown. It is the police and not the Crown attorney who decide whether criminal charges will be laid. It is clear that Mr. O’Brien had no difficulty expressing his opinion to the Crown that he did not see a need for charges. Again, this is a matter for the police, not Mr. O’Brien or the Crown. Ian MacLean testified that, at the time, he did not understand the different roles of the Crown and the police. He thought going to the Crown was sufficient. Although he knew the police were responsible for laying charges, he believed that the Crown, upon looking at the evidence, would recommend that the police be contacted if there were sufficient grounds to lay a charge.

As I found with respect to the 1982 incident, the CAS should have contacted the police about the allegations of Ms Archambault in April 1983.

In addition to not contacting the police, the CAS also did not interview female wards who were placed in the home between 1977 and 1983 to find out if they had been sexually molested or suffered any sexual advances by Brian Lapensee. Given the number of incidents involving Brian Lapensee that had come to the attention of the CAS, this would have been a prudent thing to do. Mr. MacLean testified that this is something that would be done today.

According to Ms Archambault, she was not offered any counselling or help by the CAS. There is, however, in the file recordings a reference to an appointment with Dr. Forson on April 7, 1983, during which Ms Archambault was referred to Dr. Manigat for counselling. Whether or not Ms Archambault attended for counselling on that occasion, it is evident from her testimony at the hearings that she is still experiencing difficulties. She spoke of ongoing health problems that she attributes to her alleged abuse and a need for ongoing counselling.

The Lapensees Resign and the Group Home Is Closed

The resignation letter from Mr. Lapensee, dated April 11, 1983, stated:

We now find the heartache, pressure and emotional strain, too great for us to continue in the capacity of group home parents at this time.

...

As group home parents we feel that we have taken something away from our own children. It is time we devote [sic] more of ourselves to our own family.

Therefore, we must tender our resignations as group home parents, effective June 11, 1983.

There is nothing in this letter about the problems that occurred within the home or about the Lapensees being in breach of agreements with the CAS regarding their son. Mr. MacLean testified that the CAS did not expect the letter to go into any detail. He explained that he prepared a closing summary for the Lapensee foster home, which was to be part of the permanent file. This file would be shared with any other CAS jurisdiction that contacted the CAS of SD&G inquiring about the Lapensees if they were to move to another jurisdiction and decide to become foster or group home parents again. Mr. MacLean was very confident that Children's Aid Societies in other jurisdictions would be told the real reason behind the resignation.

The closing summary prepared by Mr. MacLean on January 7, 1985, stated in part:

Apart from the excellent care provided in this home, there has been one recurring negative theme throughout the six years I have worked in the home. Very early in our group home relationship I had our female wards complain that Brian Lapensee (youngest son of Ed and Alice) was attempting to have sexual play with them. At that point, Brian was about 16 years of age and given a firm warning. In the fall of 1979 Brian again came to our attention when he left the home with a 16 year old ward who became pregnant by him and moved with him to the West. On Brian's return to the home, he became involved in drugs and drinking and was again warned that should he have further involvement with our girls he may be charged and the home closed.

Two further serious occurrence reports have been received by this Agency—both involving Brian Lapensee and sexual advances to our female wards. As a result, I see no other possible alternative than to close the home so as to protect our wards from Brian.

... During these recent incidences Mrs. Lapensee tended to turn her anger back on our girls labelling them as being responsible for the initiation of the sexual activity and saying that Brian was “victimized.” Only in the last case did Ed truly begin to accept that Brian was the instigator, however, [he] was not prepared to take any significant action. At no time was Alice ever able to recognize Brian was a problem in the home. Very hesitantly she would support recommendations controlling Brian’s activity in the Group Home, but seldom consistently carried through.

This closing summary makes reference to an incident involving Brian Lapensee when he was sixteen years of age, prior to the 1979 incident. There was no note of this in the file until this closing summary. Ian MacLean did not believe that anything was recorded or the Ministry notified of that incident. Mr. MacLean just spoke to Brian Lapensee and his parents. He could not recall who the complainant was or anything else about the situation. There was similarly no reference in the file to the 1979 incident until the 1985 closing summary. There were in fact no recordings in the Lapensee file between 1973 and the closing summary in 1985. In my view, the record keeping with respect to the Lapensee group home was inexcusable. This failure is even more egregious given the numerous concerns that arose with respect to the Lapensees’ son. To maintain consistency and ensure that decisions are made with full knowledge and information, it is critical that foster and group home files be kept up-to-date and contain detailed descriptions of any incidents or concerns.

Staff of the Lapensee Group Home

The Lapensee family ran a group home for troubled teenagers for many years. The group home was staffed in part by some of the Lapensees’ children. Ian MacLean testified that the CAS would likely not have such an arrangement today because having family members directly under the responsibility of other family members can create awkward situations. I agree and would add that, unlike a foster home, which is modelled after a natural family, a group home is a somewhat different atmosphere, with many more children in the home and therefore the need for staff to assist in operating the home. It may be also be more difficult for a child to report difficulties to the foster parents, given the family dynamic.

Although I have acknowledged several times in this chapter that times have changed and many things are done differently today than they were twenty or thirty

years ago, the Lapensee home, in my view, should have been closed down earlier than it was. The incident in 1979, in which Brian Lapensee impregnated a female ward, could have been sufficient grounds to close the home. At the very least, there should have been a discussion among CAS officials about the future of the home. According to Mr. MacLean, the issue of closing the home was not raised with his superiors in 1979. He explained that the CAS was in the process of replacing beds due to the closure of the Second Street group home, which may have been part of his focus at the time. He acknowledged that, in hindsight, he should have done things differently.

Although the decision not to close the home in 1979 might be understandable given the circumstances, the response of the CAS to the incidents in 1982 and 1983 involving Brian Lapensee was entirely inadequate. The police should have been contacted. The home should have been closed in 1982. When it was finally closed in 1983, the Lapensees should not have been allowed to resign. In any event, the closing summary should have been prepared immediately, especially given that the Lapensees were permitted to resign with no indication in their resignation letter as to the circumstances of the home's closure.

Mr. MacLean, who was a supervisor at the time of the incidents with the Lapensee home, agreed that in hindsight and with the knowledge he has today, the home should have been closed earlier. At the time, it was not something he considered.

At this point, I wish to say a few words about Ian MacLean. Although I have disagreed with some of the decisions he made in respect to the Lapensee group home, I find that he was an exceptionally dedicated and compassionate individual who genuinely had the best interests of the children in CAS care at heart. Unfortunately, often individuals like Mr. MacLean and others at the CAS are mentioned only when something goes wrong. And although it is important to hold people and institutions responsible for mistakes, it is equally important to recognize the good work and achievements accomplished by these individuals. Mr. MacLean has worked for over thirty years to ensure that children who have been abused and/or neglected have somewhere safe to live and grow. For that he should be commended.

I found Mr. MacLean to be a forthright and honest witness who readily admitted his errors and appeared to be genuinely interested in ensuring that all relevant information was put before the Inquiry for my consideration. I also found his recommendations insightful and helpful.

Roberta Archambault Is Placed in the deRonde Home

After her removal from the Lapensee group home, Roberta Archambault stayed briefly at the Lalonde home and then was sent to the deRonde home in St. Andrew's. She said that things were better there and they tried everything to

make her a part of their family. She thought that, when she moved into the deRonde home, they knew what had happened to her, but she found out only later that they did not know anything about the physical and sexual abuse she had suffered. Ms Archambault believed that, if the foster parents had been told, they would have got her the help she needed.

Roberta Archambault left the deRonde home when she was nineteen. After graduating from high school, she had three months to find a place to live, and that ended the CAS's care of her. Ms Archambault's wardship ended in September 1984.

Roberta Archambault Attempts to Access Her CAS File

In or around 1992, Roberta Archambault asked the CAS if she could see her file from when she was a Crown ward because she thought it would contain some proof of what had happened to her. Because she had been a ward for close to fifteen years, she had expected her file to be thick but she received only four or five pages. When she asked where the rest of her file was, Ms Archambault was told that the CAS could give her only a summary of her file because of other parties named in her file. She was told that she could not even look at her whole file. In addition to being disappointed with the lack of information she received, Ms Archambault felt that the content of the file differed from her experience. In particular, with respect to her time at the Hubert home, she felt as though the file recordings were talking about somebody else.

In 1994, Roberta Archambault retained a lawyer to try to obtain access to her CAS records. Some correspondence was exchanged between her lawyer and the CAS of SD&G, but Ms Archambault still did not receive the entire contents of her file. She was provided with an additional three-page summary. After receiving this summary, Ms Archambault made an appointment to see CAS Executive Director Richard Abell. She testified that she asked him what happened to the information she disclosed to Bryan Keough about the Huberts. According to Ms Archambault, Mr. Abell called Mr. Keough, who said that he didn't write anything down because he thought she was a liar. Mr. Keough testified that he did not recall any such phone call with Mr. Abell.

Richard Abell recalled meeting with Ms Archambault in 1994 and that she had been seeking access to her file for several years. During a conversation on August 24, 1994, Mr. Abell told her that she would not be getting access to her file. He testified that this was the policy at the time.

As I will discuss in a later section, the inability of individuals who were in the care of CAS as children to obtain access to their files is troubling and, in my opinion, unacceptable.

Jeannette Antoine

Jeannette Antoine (née Lapointe) was born on September 24, 1960, the youngest of four girls. Ms Antoine³⁰ and her three older sisters were placed into the care of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) at a very young age. She became a temporary ward on February 6, 1962, and a permanent ward in 1964. She lived in various foster homes and group homes and alleged she was a victim of both physical and sexual abuse while a ward of the CAS.

Jeannette Antoine and her sister Lorraine were the two youngest of the four sisters. They remained with their maternal grandmother until March 5, 1962, when they were placed in the St. John foster home for a period of two years. Jeannette's other two sisters were placed in care elsewhere and were eventually adopted.

In April 1964, Jeannette and Lorraine were moved to the Martin home in Cornwall. The St. Johns could no longer foster the children because of Ms St. John's health. The sisters remained at the Martin home until August 27, 1964, when they were both placed on probationary adoption, with Mr. and Ms Taillefer and their ten-year-old son. The foster mother had a difficult time adapting to life with the two girls. The adoption process was terminated, and they were removed from the home on October 27, 1964, and placed again in the St. Martin foster home. In early 1965, the foster mother reported that the two girls, who slept together, were frequently engaged in what appeared to be sex play. On July 1, 1965, Jeannette Antoine and her sister were removed from the Martin home and placed in the Lamarche home, where they gained security and their behaviour slowly improved. On July 12, 1966, Jeannette and Lorraine were once again placed on probationary adoption, with the Rowan family in Orillia. The adoptive placement was of short duration, and the two girls were returned to the care of the CAS of SD&G on September 15, 1966.

The Reynen Foster Home

Jeannette Antoine and her older sister Lorraine were placed in the Reynen foster home, located in Ingleside, on September 15, 1966, when Jeannette was five. The Reynens had a nine-year-old daughter, another foster child, and an adolescent son, aged eighteen, who was home for the weekend when Jeannette and

30. For purposes of clarity and consistency, I will refer to Jeannette Lapointe Antoine as Jeannette Antoine or Ms Antoine throughout this section. I will refer to her sister as Lorraine or Lorraine Lapointe.

Lorraine arrived at the home. There were other foster children placed in the home from time to time. Mavis Nixon was the children's childcare worker from October 1966 to January 6, 1967, when the children were transferred to the Anne Mitchell, their new worker.

Jeannette Antoine testified that the Reynens were from Holland and would occasionally return there for visits, during which time the girls would stay at either the Looyen or the Heemskerk foster homes. I have reviewed the foster file of Jeannette Antoine, which confirms that they were temporarily placed with the Looyens while the Reynens were away, but they were placed with the Heemskerks because they were being considered for adoption. Ms Antoine testified that they would also stay in one of these homes at times when Ms Reynen was admitted to the hospital. Ms Antoine testified that she lived in the Reynen foster home until she was fifteen years old, following which she lived in a number of group homes.

Jeannette Antoine alleged that she and her sister were both physically and sexually abused at the Reynen home. She testified that the physical abuse started within a month of their arrival and that the sexual abuse started approximately four months later. According to Jeannette Antoine, the foster mother physically abused the girls on many occasions. The abuse included pulling their hair, slapping them, punching them, and refusing to feed them. She claimed that the Reynens' daughter was also physically abusive. Ms Antoine recalled the Reynens' daughter kicking her sister in the mouth.

Ms Antoine also alleged that Mr. Reynen once took off his belt, chased her outside, and pushed her. She hit her head on a big rock and ended up with a concussion and stitches. Although she was taken to the hospital, Ms Antoine testified that she told people at the hospital that her sister had hurt her because she was worried that, if she told the truth, Mr. Reynen would do something else to her.

Jeannette Antoine testified that Mr. Reynen started sexually abusing her when she was about five or six years old. She said that she and her sister shared a bed in the basement and he would lie down between them and touch them. She testified that the abuse became more frequent and intrusive, and he eventually had sexual intercourse with them. According to Ms Antoine, initially she and her sister did not talk about the abuse, but when she was about twelve or thirteen years old she started to tell people, including school teachers and CAS workers.

Interaction With the CAS While in the Reynen Home

Ms Antoine testified that different CAS workers showed up at the home every two to three months. She recalled that the Reynens were always present, and the two sisters never had any time alone with CAS workers. She also believed that

the visits were scheduled in advance, because when the CAS worker showed up there were dolls and jewellery in their room, which would be put away after the CAS worker left.

According to Jeannette Antoine, the CAS became involved when she was hospitalized after she hit her head on a rock. She testified that a worker named Mavis came to the house after she was released from hospital and advised that she had been trying to reach Ms Antoine but that the Reynens kept giving her excuses for why she could not come to the phone. Ms Antoine testified that she told this worker that she had received the injury to her head as a result of Mr. Reynen chasing her. She explained that she had a chance to speak freely to Mavis "for like 2 seconds" before the Reynens came into the room. Although she was able to convey her message, Ms Antoine testified that her worker did not believe her and asked Bill Reynen what had happened and that he told her that Lorraine had pushed Jeannette.

Ms Antoine also alleged that a teacher, Mr. Clancy, asked about a bruise on her sister, which is the bruise she received when the Reynens' daughter kicked her in the mouth. Ms Antoine testified that she and her sister told Mr. Clancy about some of the physical abuse one day. The CAS was contacted and Mavis came to the school. According to Ms Antoine, the sisters told the CAS worker only about the physical abuse, as they were too scared to talk about everything that was happening to them. She said the worker took them home and spoke to the Reynens, who explained that the Reynens' daughter kicking Lorraine had been an accident.

Jeannette Antoine testified that she told her worker Mavis "bits and pieces" about the abuse she suffered at the Reynen home. For example, if she had a bruise on her, she would tell Mavis exactly what happened. I have reviewed the file, which indicates that Mavis Nixon was their adoption worker at the time they were placed with the Heemskerks.

Bryan Keough became Jeannette Antoine's worker in 1972. She was approximately twelve years old and living at the Reynen foster home.

Ms Antoine testified that Bryan Keough was told about the physical and sexual abuse at the Reynen home. According to Ms Antoine, she was present when her sister told Mr. Keough that Bill Reynen was raping her and that she had to get out of the home. Bryan Keough denied that Lorraine ever told him she was being sexually abused at the Reynen home. He remained her worker until her wardship was terminated, and he testified that she never disclosed to him that she was sexually abused by Mr. Reynen. Although Mr. Keough did move Lorraine from the home, as will be discussed below, he testified that he had had no indication at the time that she was being sexually abused.

Jeannette Antoine testified that she told Bryan Keough about both the physical and the sexual abuse the day that her sister was removed from the home. According

to Ms Antoine, Mr. Keough responded by calling her a liar and telling her that this was the best foster home the CAS had and she was lucky to be there. Ms Antoine testified that she asked many times to be moved to another home.

Ms Antoine Alleges Abuse at the Looyen and Heemskerk Homes

Jeannette Antoine recalled that she and her sister began going to the Looyen home within the first year that they were at the Reynen home. Ms Antoine testified that they were abused by Ms Looyen's father, who would put them on his lap and touch them. She recalled that the abuse did not begin immediately and might have started when she was seven or eight years old. According to Ms Antoine, there was also physical abuse at the Looyen home, and she recalled an incident where her sister was beaten because the foster mother thought she had ruined her flowers.

Ms Antoine testified that she and her sister were too scared to report the abuse in the Looyen home and did not believe anybody observed the abuse they suffered there. However, she alleged that she told a number of CAS workers about the abuse later. In particular, she said she told Mr. Keough when he picked them up at the house and took them back to the Reynens; that she told Françoise Lepage after she ran away from the Anson home; and that she told Angelo Towndale at the meeting in March 1976 regarding abuse at the Second Street group home. Mr. Keough denied receiving this disclosure from Ms Antoine. He believed that Ms Antoine was in the Looyen foster home prior to Mr. Keough joining the CAS.

The child care file indicates that Jeannette and her sister Lorraine were transferred to the Heemskerk home for adoption placement on March 22, 1968, but that they had stayed there a number of weekends prior to the transfer. The adoptive worker at that time was Mavis Nixon. The Heemskerks already had an adoptive son. On July 2, 1968, the Heemskerks announced that they could no longer keep Jeannette Antoine, as she had been engaging in sexual play with their son. The foster mother also revealed that Jeannette Antoine, who was not yet eight years old, enjoyed exposing herself to the teenage hired hand and had been observed stimulating the dog. She indicated at the time that she wanted Jeannette to be removed but that her sister could stay. On July 3, 1968, there was a case conference, which included the CAS executive director, Tom O'Brien, regarding Jeannette's behaviour. They discussed the possibility of separating Jeannette from her sister and agreed to do so if this would not traumatize Lorraine. According to the file recording, Mr. O'Brien also consulted Dr. Irwin, who was of the opinion that Ms Antoine's problem was not physiological but psychological. Arrangements were made for Ms Antoine to see Dr. Burns on July 15, 1968.

On July 11, 1968, the CAS worker was advised that the Heemskerks wanted both sisters removed. They indicated that Jeannette had been caught twice engaging in sexual play. The next day, on further examination of the file, Mavis Nixon also noted the previous incident of sexual play involving Jeannette and her sister, which I discussed earlier. Jeannette Antoine saw Dr. Burns on July 15, 1968. He was of the opinion that her behaviour was serious and that she could benefit from treatment. On July 16, 1968, both girls were moved back to the Reynen foster home. Ms Reynen was advised that Jeannette had been sexually acting out, and she indicated that her behaviour would be closely monitored. I note that Ms Reynen and Jeannette Antoine visited Dr. Burns in September and November 1968 and January 1969, but that the foster mother had not observed any further regressive behaviour. Ms Connelly was the case worker assigned to this case, until it was re-assigned to R. Martel in December 1969 and Ms Ward in May 1970. The file does not report any difficulties with the placement during that period of time. A number of workers were assigned to this file until Bryan Keough became the childcare worker in August 1972.

Jeannette Antoine testified that there was also a lot of physical abuse in the Heemskerk home, with the foster mother "smacking [them] around." According to Ms Antoine, she reported this abuse to Bryan Keough when he picked them up and brought them back to the Reynens'. There are no references in Ms Antoine's file of her disclosing physical or sexual abuse to Bryan Keough at that time. It is apparent from the file that Mr. Keough became the caseworker only in 1972, four years after the two sisters were returned to the Reynen Foster home by Mavis Nixon.

Ms Antoine initially testified that a ranch handyman who worked for the Looyens raped her sister and molested her; however, upon being shown a copy of handwritten notes she made indicating that this abuse happened at the Heemskerk home, she testified that she must have been confused and did not remember at which home this happened. I find that, at times, Jeannette Antoine may have been confused about the location, timing, and details of the events from her past. This is not surprising given the passage of time, the number of CAS workers assigned to her file, and the frequency with which she was transferred in and out of numerous foster homes, all at a very young age.

Although there are no references in the case file to Ms Antoine disclosing abuse to her CAS workers, the references to sexual behaviour in Ms Antoine's file should, in my opinion, have alerted the CAS to a potential problem. Although these entries are not conclusive of any mistreatment, they indicate behaviour that should cause concern when exhibited by such a young child. Although the CAS took steps to ascertain a medical or psychological reason for Ms Antoine's behaviour it should also have, in my opinion, investigated the foster homes where

she resided to determine if circumstances in those homes were the root cause of her sexual behaviour.

Bryan Keough testified that when he became Jeannette Antoine's worker in 1972, he read her file but he could not recall making a note of these particular recordings regarding her sexual behaviour and nobody discussed this matter with him.

Jeannette Antoine Leaves the Reynen Home

Bryan Keough testified that there were some issues in the Reynen foster home. The foster mother suffered from depression, and in November 1972 she was hospitalized due to a nervous breakdown and was released one month later. On March 15, 1973, Bryan Keough met with Mr. Reynen, who requested that the children be taken out of his home at the end of the school year. In June 1973, Mr. Keough had a discussion with a social worker, Pierre Landry, about some of the problems the foster parents were having, including the foster mother suffering breakdowns. Despite these issues in the home, the children remained there. Mr. Keough testified that his reasoning at the time was that the children seemed to be doing relatively well and that the focus should be on helping Ms Reynen resolve her problems.

On July 19, 1973, Bryan Keough received a call from Mr. Reynen, who asked that Lorraine Lapointe be moved out of the home as soon as possible but said that they had not yet made up their minds about Jeannette. They subsequently decided that Jeannette could stay. Mr. Keough testified that he did not wonder why Mr. Reynen wanted Lorraine but not Jeannette out of the home, even though she was, according to Mr. Keough, a bit of a troublemaker in the home. It never occurred to Mr. Keough that something sexual had occurred between Mr. Reynen and Lorraine. Nor did it occur to him to ask Lorraine about whether something might have happened after Mr. Reynen requested that she be removed. In hindsight, he agreed it was strange that Mr. Reynen wanted Lorraine rather than Jeannette to be removed from the home.

On June 3, 1974, Mr. Keough met with his supervisor, Angelo Towndale, to discuss Jeannette Antoine's placement in the Reynen home. Mr. Keough testified that when the sisters were separated he thought Jeannette Antoine blamed him and working with her after this was very difficult. He suggested at this meeting that her file be transferred to a female worker, and it was subsequently transferred to Françoise Lepage. Ms Antoine remained in the Reynen foster home until April 1975, when Mr. Reynen requested that she be removed by the end of the month.

Jeannette Antoine's Experience in CAS Group Homes

After leaving the Reynen home, Ms Antoine was placed briefly in the Lisieux group home, following which she was placed in the Second Street group home. Ms Antoine's experiences at the Second Street group home are discussed in the next section. Jeannette Antoine's last placement with the CAS was in the Anson group home in Minden.

Although Ms Antoine claimed that Bryan Keough remained her worker, Mr. Keough testified that he was not her worker while she was at the Anson group home. Mr. Keough ceased being Ms Antoine's worker in 1974, when the file was transferred to Ms Lepage. In light of the events at Second Street group home and the allegations made by Ms Antoine against Mr. Keough, which I discuss in the next section, I do not believe that Mr. Keough was assigned as Ms Antoine's worker while she was in the Anson group home. The file indicates that Ms Lepage was her childcare worker until September 1997, when the file was transferred to Bill McNally.

While Jeannette Antoine was at the Anson group home, her sister Lorraine got married. Ms Antoine alleged that Bryan Keough drove her to the wedding and he put her in the trunk, only letting her out twice to go to the bathroom. Mr. Keough did not recall driving Ms Antoine to her sister's wedding and denied ever placing her in the trunk of his car. In a statement Ms Antoine gave to Constable Kevin Malloy of the Cornwall Police Service on January 21, 1990, she said that the "group home boss David" drove her to Cornwall to see her sister get married. Although Ms Antoine testified that this was a mistake and insisted that it was Bryan Keough that drove her, I am unable to conclude that Mr. Keough drove her to her sister's wedding or that he placed her in the trunk of his car.

Ms Antoine was discharged from the Anson group home on June 19, 1978, and her file was closed at her request, effective August 27, 1978.

A Difficult Childhood

Jeannette Antoine, unfortunately, had an awful experience as a young child in foster care. I do not disbelieve that she was physically and sexually abused while in foster care; however, I am unable to conclude with certainty by whom. I am also unable to determine with certainty who was made aware of the abuse she suffered, as there were no specific recordings in her file containing allegations of abuse. The lack of these entries does not mean that Ms Antoine did not in fact report abuse to her CAS workers. I have heard evidence from several witnesses, including from the CAS, that, in the past, children were not believed when they alleged

abuse at the hands of an adult. In my opinion, all reported allegations of abuse should be recorded in a child's file regardless of whether they are believed or corroborated.

In this case, there were clear indications in the recordings that something was amiss, including observations about sexualized behaviour on the part of Ms Antoine when she was very young. In my opinion, signs of abuse were prevalent in this young girl's file, and they should have been properly investigated.

The Second Street Group Home

The Second Street group home was established by the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) in 1975. It was the Society's first attempt, explained Angelo Towndale, to provide alternative care for children with behavioural problems who did not function well in traditional foster homes. It was located in close proximity to the CAS office. The previous year, the CAS had established a group home on Lisieux Street in Cornwall for teenage girls who required minimal supervision.

When the Second Street home was opened in 1975, there were no CAS policies on physical discipline and no written documents stipulating that sexual overtures towards and relations with CAS wards were prohibited and grounds for dismissal. There was also no CAS training for the individuals who operated and worked at the group home. To exacerbate matters, the staff responsible for the children at the Second Street home were not adequately screened.

Rod Rabey, who worked in the Child Protection Department of the CAS of SD&G, was selected to operate the Second Street home when it first opened in 1975. Mr. Towndale was involved in the decision to select Mr. Rabey for the position. Mr. Tom O'Brien was the executive director at the time, but shortly after the group home opened he left the agency on sick leave.

Mr. Rabey operated the Second Street group home with his wife. Dave Devlin was a supervisor in the CAS Protection Department and was responsible for supervising the home. Children who lived in the home continued to have contact with CAS employees, as each child in the home was assigned a CAS worker. For example, Bryan Keough had been Jeannette Antoine's childcare worker since 1972, when she was about twelve years old. Ms Antoine moved into the Second Street home in April 1975. She referred to Mr. Rabey as "excellent," and she explained in her testimony that he "didn't want it as a group home. He wanted it as a setting for family, everybody pitched in to do everything."

The feedback on the group home was positive in its first months of operation, and Mr. Towndale did not recall hearing any complaints or concerns with respect to the treatment of children in the home in the fall of 1975.

Unfortunately, Mr. Rabey's time at the Second Street group home lasted only a few months. He died suddenly in December 1975, shortly before Christmas.

It was decided by the CAS that Derry Tenger, who worked in the Child Care Department, would fill Mr. Rabey's place and run the group home. It is of significance that CAS officials allowed Mr. Tenger to choose his staff for the group home without involvement in any of the interviews or the decisions regarding which individuals would be hired to care for the children at the home. As Mr. Towndale acknowledged, staff at the home were not screened by the CAS, the agency did not interview any of the candidates, and the CAS did not check references of the individuals selected to care for the children at the home. Hiring the staff was at the sole discretion of Mr. Tenger. In this respect, the CAS failed to properly screen the group home staff.

Mr. Tenger decided to ask Bryan Keough, a close personal friend, to assist him and asked the Children's Aid Society to designate Mr. Keough as the liaison officer between the group home and the agency. Although Mr. Keough continued to have a caseload at the CAS, he visited the group home and agreed to help Mr. Tenger "on a need basis." Mr. Keough testified that he had about two or three shifts in the group home, including an overnight shift. He routinely visited the group home, about twice or three times a week. Mr. Keough was under the supervision of Angelo Towndale at the CAS. Mr. Tenger also hired Mr. Keough's brother, Michael, as a staff member in the group home, as well as Mr. Tenger's daughter, Heather. He also hired Jerry MacGillis. To Mr. Towndale's knowledge, neither Mr. Tenger nor Mr. Keough had social work degrees or formal training. Mr. Towndale agreed that they had learned "on the job."

Bryan Keough's Knowledge of and Participation in Discipline in the Second Street Group Home

Bryan Keough did not discuss with the child residents their experiences in the home, despite his position as the liaison between the CAS and the Second Street home. He had interactions with the children when he visited the group home two or three times weekly, and on the shifts in which he was responsible for the care of the children. He did read the logs prepared by the staff at the group home. There was a requirement that all punishments administered be reflected in the log. In addition, a daily log was to be completed on each shift for every child.

Mr. Keough testified that he had witnessed corporal punishment as well as other forms of discipline of children at the group home. He himself had administered corporal punishment to a young boy at the Second Street home: he had strapped the child three or four times on his buttocks.

Mr. Keough witnessed various forms of discipline at the Second Street home. In the winter months, if the children misbehaved, they were forced to shovel

snow from one pile to another, which Mr. Tenger referred to as “brainless activity.” Mr. Tenger also required the children to wash the floor tiles with a toothbrush. The children were expected to eat all the food on their plate at each meal; any food that remained on their dishes was reheated and served to them at the next meal.

Mr. Keough would occasionally have coffee with Derry Tenger. Mr. Keough considered Mr. Tenger a good friend. Mr. Tenger discussed with Mr. Keough the effectiveness of the discipline practised at the home. Bryan Keough testified that he “had no serious issues with what” Mr. Tenger was doing at the home. As a result, he never reported the corporal punishment or other forms of discipline to his superiors at the Children’s Aid Society.

Bryan Keough acknowledged that he was involved in conduct with C-75 that was “inappropriate” and an “error in judgment.” On February 28, 1976, on a Saturday afternoon, Bryan Keough received a call from the Ontario Provincial Police (OPP) in Long Sault asking him to pick up a runaway teenage girl. Mr. Keough drove to the police station to retrieve C-75, a CAS ward with whom he had had no previous contact. Bryan Keough transported C-75 to a receiving home run by Ms Matte. He brought the girl to a bedroom and instructed her to take off all her clothing and put on a housecoat. Mr. Keough acknowledged that the fifteen-year-old girl was physically well-developed. She refused to remove her clothes, and a physical struggle ensued between her and Mr. Keough. Mr. Keough forcibly removed the girl’s pants, shirt, and bra. When asked why he forced her to strip, Mr. Keough explained that, without clothes or shoes, she could not run away in the winter, particularly if he tied her to the bed, which he proceeded to do. After he initially tied the girl’s hands and feet to the bed with nylon, she was able to extricate herself. A further struggle ensued, and he then successfully bound the girl tightly to the bed. Mr. Keough then left Ms Matte’s receiving home.

Mr. Keough testified that he soon realized that his actions were excessive and inappropriate—in his words, “totally stupid”—and that he had exercised bad judgment. He decided to contact his supervisor, Dave Devlin, that night to discuss the incident. Mr. Devlin immediately reprimanded Mr. Keough. Mr. Keough testified that this reprimand was “expected because after I left the home I realized just how big an error in judgment I had made ... [H]e needed to reprimand me because it was totally inappropriate.” Later that night, Mr. Keough picked up C-75 at Ms Matte’s receiving home and brought her to the Second Street home.

Bryan Keough saw one of the staff—he believes it was Jerry MacGillis—strap C-75 with a belt. The corporal punishment administered to this girl was sanctioned by Mr. Tenger: the director of the group home had ordered Mr. MacGillis to strap the teenager. Mr. Keough testified that, although he “believed in corporal punishment,” he had concerns about the physical punishment administered to C-75 for two reasons. First, the girl was strapped about four or

five times for behaviour she had (allegedly) engaged in before she became a resident of the Second Street home. Mr. Keough had just brought C-75 to the group home as a “new placement,” and, in his view, “when you entered a foster home or a group home ... you always entered with a clean slate. No matter what had happened prior to that, you started from a clean slate.” The second reason Mr. Keough had concerns about the corporal punishment was that Mr. Tenger was visibly angry when the discipline was administered to the girl; Mr. Tenger’s voice was loud, his face was red, and he was very upset. Mr. Keough thought that it was not appropriate to corporally punish a child from a state of anger. Bryan Keough witnessed the strapping of C-75, saw the circumstances in which it was administered, and saw Derry Tenger’s rage. He considered this punishment inappropriate, yet he did not report it to his supervisor, Dave Devlin, or to other officials at the CAS.

Mr. Keough knew that teenage girls at the home had been forced to clean tiles with a toothbrush and, in the winter, move snow from one pile to another. He also knew that Mr. Tenger, an intimidating man, wore black clothing, as did his own brother, Michael Keough, a staff member at the group home.

The following week, Mr. Keough learned that, on the night he brought C-75 to the group home, the teenager had been forced to clean the house, wearing only a bra and underpants, in the presence of staff—clearly a degrading and humiliating experience for the fifteen-year-old. Mr. Keough claimed he was unaware that children in the home were compelled to take cold showers throughout that night.

It is clear that Bryan Keough was aware of discipline at the group home that constituted abuse. In my view, he should have reported this abusive behaviour to his superiors, and he failed to do so. Mr. Keough also used inappropriate methods of restraint and discipline on children, in particular C-75.

CAS Officials Aware of Problems at Second Street Group Home in Early 1976

It became apparent to Mr. Towndale, shortly after Mr. Rabey’s death, that there were problems at the Second Street group home. By February 1976, the acting director of the Children’s Aid Society was aware that the treatment of the children in the group home needed to be addressed.

When Tom O’Brien, the executive director of the CAS, went on sick leave in February 1976, the Board of Directors asked Angelo Towndale to fill his position until Mr. O’Brien returned. It was at a staff meeting in February, shortly after becoming acting executive director of the CAS, that Mr. Towndale learned there were concerns regarding the Second Street group home. Some Board members

as well as the program supervisor of the Ministry of Community and Social Services, Steve Charko, attended this meeting. Mr. Towndale was told that Derry Tenger and other staff at the Second Street group home dressed in black. Dressing in dark attire was perceived as intimidating for the children at the home. Mr. Towndale then asked Mr. Devlin to check into things after the meeting. Mr. Devlin spoke with Mr. Tenger and reported back to Mr. Towndale that there was “questionable” discipline administered to the children by staff at the home. Mr. Towndale spoke with Mr. Tenger about the discipline issue. Mr. Tenger challenged him on his objection to corporal punishment, given that there were no policies at the CAS on this issue at the time.

Mr. Towndale and Mr. Keough both testified that they knew there were no standards or guidelines at the CAS regarding corporal punishment. They both indicated that different attitudes existed among CAS staff as to the appropriateness of corporal punishment and the extent of physical discipline that was acceptable for children under the care of the agency. When CAS social workers assessed foster homes, it was within the discretion of the individual social worker to determine whether the physical treatment of the children was excessive. In this regard, Mr. Keough noted that there were “different views ... from yes to no to in between. It was all over the scale. There was no policy, so it was all left to personal opinion, personal views.”

Mr. Towndale had concerns about the physical treatment of the children at the Second Street group home as well as other foster homes under the jurisdiction of the CAS of SD&G. Notwithstanding his concern, it does not appear that any action was taken other than the confrontation with Mr. Tenger. At the Board of Directors meeting on March 2, 1976, it was announced that, at the annual meeting scheduled later that month on March 24, 1976, a discussion on discipline with panel members and a moderator would take place. Mr. Towndale selected this topic for discussion because he thought his agency needed to address this issue, particularly because of concerns raised regarding corporal punishment at group homes and other foster homes.

On March 5, 1976, Mr. Towndale, Dave Devlin, and board member Canon Sidney Irwin met with staff from the Second Street home, including director Derry Tenger, Michael Keough, and Bryan Keough. The purpose of the meeting was to discuss the physical punishment administered to the children at the home.

Mr. Irwin, a member of the Board in 1976, was the Rector of Trinity Anglican Church in Cornwall. Derry Tenger had been the organist and choirmaster at Trinity Church.

At the meeting, Mr. Towndale and Mr. Devlin made it clear that they were opposed to physical punishment. Mr. Tenger told the CAS officials that physical punishment was an important part of his program at the group home and that he

was reluctant to give it up. Mr. Tenger also stressed that no policy existed at the CAS on corporal punishment. Mr. Towndale responded that this type of discipline was not acceptable. Mr. Tenger disagreed. He was instructed to exercise caution in his administration of physical punishment to the children until such time as the CAS developed a policy on what constituted inappropriate physical discipline by staff.

Mr. Towndale, as acting executive director of the CAS, had a duty to ensure children under the care of the CAS were safe. His instruction to Mr. Tenger to exercise caution was clearly insufficient at that time; rather, he should have directed Mr. Tenger to completely refrain from using physical punishment. Furthermore, after this meeting, the CAS should have begun actively developing a policy regarding inappropriate physical discipline by staff.

Residents Run Away From the Second Street Home: Complaints by Children of Sexual Conduct and Excessive Physical Punishment

On Sunday, March 7, 1976, three female youths from the Second Street home ran away. When they were picked up by the police, the girls complained that they were strapped at the group home. The girls were also very worried they would receive further beatings as punishment for fleeing the home.

In fact, the following day, Derry Tenger and Michael Keough asked Angelo Towndale if they could strap the three girls as punishment for their behaviour. Mr. Towndale refused to grant permission, and he contacted the Chair of the Personnel Committee at the CAS, Ms Labekovski, and a meeting of the committee was arranged for the next day, March 9, 1976.

Mr. Towndale thought that he should speak to the children to gather information on their treatment at the group home. The acting executive director decided to hold interviews at the CAS offices and speak to each child individually. The girls were interviewed by Sister Theresa Quesnelle, who operated the group home for teenage girls in Cornwall, and Peggy Follon. Together with Mary Gratton, Mr. Towndale interviewed the boys who lived at the group home.

C-75 described the incidents that had occurred the evening she had been picked up by Bryan Keough at the OPP Long Sault Detachment and taken to Ms Matte's receiving home. She had been brought to a bedroom and ordered by Mr. Keough to strip off her clothes. When she refused, Mr. Keough, physically struggled with her and removed her pants, shirt, and bra. She was then given a housecoat. Mr. Keough then bound her hands and feet with nylon and locked the door. The girl said that she was bound for about six hours and that her hands became sore and swollen. When she was brought to the group home, she was strapped, forced to remove her clothes, and required to do housework throughout

the night in her bra and underpants “in front of staff,” clearly a humiliating experience. The girl was also forced to take cold showers that night as a form of discipline. She was not permitted to attend school for the week. Sister Theresa Quesnelle and Ms Follon saw bruises on the girl’s buttocks. This was one week after she had received these beatings, yet the physical marks of these punishments on her body were clearly visible.

C-75 had a scheduled court appearance regarding her wardship soon thereafter. She said it was her intention to inform the judge of her experiences in the Second Street home and her treatment by staff and by Bryan Keough.

In these interviews, CAS officials also learned that, at the Second Street group home:

- children were forced to wash the floors with a toothbrush;
- children were required to get up at five o’clock in the morning and shovel a huge pile of snow from one side of the yard to another, for hours;
- children were forced to kneel for hours in a corner on a pile of beans, with arms above their heads—if they lowered their arms, they were strapped;
- a boy was strapped every night for a week because he had jumped on the bed and had been noisy at night;
- a boy said he was afraid to ask for glasses and needed clothing;
- the children were sometimes strapped in front of staff and other children at the home;
- one girl was strapped by the staff member she liked best, and Mr. Tenger had compelled the staff member to hit the girl with greater force.

Clearly, the information conveyed to the CAS officials by these wards raised serious questions about physical, sexual, and psychological abuse of children under the care of the Children’s Aid Society. Mr. Towndale considered this treatment of the children “demeaning, quite harsh, unacceptable” and “very inappropriate.”

These interviews with the children focused on physical discipline. The children were not asked questions during the CAS interviews about sexually inappropriate behaviour at the Second Street home; this issue was not probed. This was despite the fact that Mr. Towndale knew that female wards had had their clothes removed and that they had been required to do housework in their bra and underpants, and that Bryan Keough had taken off C-75’s clothes and bound her. Mr. Towndale agreed at the hearings that this conduct had a sexual dimension.

Mr. Towndale considered the treatment of C-75, a temporary ward with the CAS, appalling.

Mr. Towndale had serious concerns about Derry Tenger's treatment of the children at the Second Street group home, but he did not know how to deal with this objectionable and, in his view, egregious conduct. He testified that no CAS policies addressed this issue, and Mr. O'Brien was not available for advice. Mr. Towndale did not contact the Ministry of Community and Social Services for guidance or advice on how to handle the situation.

On March 9, 1976, the Personnel Committee of the Children's Aid Society met. Mr. Towndale, Mr. Devlin, Ms Gratton, and Sister Theresa Quesnelle were also present. A report of the children's interviews was presented to the committee. Mr. Towndale had previously arranged to have speakers at the meeting. John McKee, the director of Laurencrest youth facility, had been invited to address the meeting and present his views on corporal punishment. He made it clear that corporal punishment was never used at Laurencrest and, in his view, that such punishment had no value in terms of long-term behavioural change. He was a proponent of behavioural modification, which he stated had been very successful at Laurencrest. At the meeting, the Children's Aid Society lawyer addressed the legal ramifications of corporal punishment.

At that juncture, it was decided that Derry Tenger, Bryan Keough, and Michael Keough should join the meeting to discuss their views on physical punishment and other forms of discipline administered at the Second Street home. These men verified that the statements of the children were accurate. However, both the director and staff from the group home "felt that their actions were justified" and that "the behaviour of the children had greatly improved" as a result of the punishments administered to them. It was a "very emotional meeting," and a wide array of views on appropriate discipline of wards of the CAS were expressed. Bryan Keough described the meeting as "very heated."

A motion was passed at the CAS Personnel Committee meeting that staff at the Second Street group home refrain from strapping the children and that, if isolation of the child were considered necessary, it should not exceed twenty-four hours and that the child should be provided with a bed and bedclothes. The Personnel Committee considered the information from the Second Street home very significant and serious, thought that further investigation should be pursued, and agreed that CAS protocols should be developed.

The adoption of the motion was a step in the right direction but the CAS should have been more proactive, given the reaction of the director and staff of the Second Street home, who clearly did not agree with the views of the CAS Personnel Committee.

Five Children Run Away From the Second Street Home

On March 10, 1976, the day following the meeting of the CAS Personnel Committee, five children, one of whom was Jeannette Antoine, ran away from the Second Street home. Jeannette and another ward, Freddie, came to the CAS office and asked to speak to Sister Theresa and Ms Follon. Ms Antoine told Ms Follon and Ms Labekovski that she had been strapped twice in one day because she had lost her mittens. The CAS staff were also told that Freddie had been strapped for losing his place in his prayer book in church and for talking at night after lights went out. The children were afraid to return to the group home.

Ms Follon brought the children to her home for supper, and Jeannette and Freddie disclosed that the other children were hiding in a cottage in Summerstown. Dave Devlin transported the children to the Second Street home that evening. It is noteworthy that C-75, one of the residents of the home, was in court the same day the children ran away from the group home. The judge recommended that her wardship be terminated because of extreme disciplinary measures at the Second Street home.

By March 11, 1976, Mr. Towndale had decided that the situation at the group home had deteriorated to such an extent that he should remove Mr. Tenger immediately as director. Because there was no CAS policy on physical punishment and because Mr. Towndale did not feel he had the full support of the Board, he asked Mr. Tenger to return to his former position at the CAS and did not take any action to terminate his employment. Mr. Tenger made it clear that he had no intention of returning to his former position. Mr. Towndale gave him one week to think about the offer. Dick Mulligan, another CAS employee, replaced Mr. Tenger. The staff at the group home were upset and hostile about the removal of Mr. Tenger by the CAS. They also were required to leave the Second Street home for a one-week period.

Mr. Towndale claimed that he went to the Board to receive direction because he was concerned about lawsuits that could result from his decision to terminate the employment of CAS staff. He testified that "Children's Aid was under immense financial pressure at that time" and that the Ministry of Community and Social Services had a "very low profile" because, at that time, children had "no voice." Mr. Towndale explained that he went to the Board to get some "direction" about actions to take regarding the inappropriate treatment of children at the group home but did not receive definitive guidance:

So I went to the governing body and said there is a problem and what do we do? And people were all divided on that issue. So how do I go ahead an [sic] fire somebody and—on principle, maybe I should have done that at that time, but I didn't do it.

At the Personnel Committee meeting on March 17, 1976, it became clear that staff at the group home were still not receptive to other ways of disciplining the children. Moreover, Mr. Tenger had refused to attend this meeting. Staff at the home insisted that other methods were not effective:

They felt that other methods like removal of privileges or behaviour modification or grounding were too easy—"like patting a child on the head and saying naughty boy." They talked about discontinuing a hyperactive child's medication ...

The reason why Jerry was forced to strap [C-85] against his will, was because up until then [C-85] had an infatuation towards Jerry and the kids would respect Jerry's authority, because up until then, he had been ineffective in disciplining them and Mr. Tenger felt the kids would behave better for him if they knew he strapped too.

Members of the Personnel Committee decided that existing staff at the Second Street group home could not work with a new director who believed in behavioural modification and less negative, non-physical methods of disciplining the children. A written record of the meeting stated that staff "were not willing to learn new ways of discipline and voiced contempt for other more positive theories suggested to them. They showed a hostility and contempt for the Committee." The CAS committee decided that the current director and staff of the group home should submit their resignations to the Board immediately. Resignations were received in the next two days.

It is of significance that Bryan Keough was not asked to resign and was permitted to remain on staff at the CAS. Mr. Keough was under Mr. Towndale's supervision. Mr. Towndale considered Mr. Keough's behaviour appalling, yet no serious disciplinary measures were taken against this CAS staff worker. Mr. Towndale acknowledged at the hearings that, in hindsight, perhaps he should have terminated the employment of staff such as Bryan Keough for inappropriate treatment of children. At the hearings, Mr. Towndale stated that Mr. Keough was not fired because that was a decision of the Personnel Committee and the CAS Board was divided.

Bryan Keough testified that Mr. Towndale met with him shortly thereafter, to express his disappointment in Mr. Keough's behaviour and to inform him that a reprimand would be placed in his personnel file.

Mr. Towndale's decision to place a reprimand in Mr. Keough's file was insufficient in my view. The CAS had received information on Mr. Keough's handling of C-75 from Mr. Keough himself and from C-75. It is noteworthy

that the handling of C-75 by the CAS was discussed before a judge, who decided to terminate her wardship. There was sufficient information available to Mr. Towndale to take action against Mr. Keough. He should have reported the matter to the police.

At the CAS Annual Meeting on March 24, 1976, speakers selected by Mr. Towndale made presentations on corporal punishment. Different views were elicited. Yet the CAS did not develop a policy on physical discipline of children at that time. Mr. Towndale was not successful in developing a protocol on unacceptable physical treatment of children under the care of the CAS.

When Mr. O'Brien returned to the CAS in April 1976 after his sick leave and resumed his position as executive director, he was briefed by Mr. Towndale regarding the treatment of children at the Second Street group home and the actions of Mr. Towndale, the Personnel Committee, and the Board of Directors. Mr. O'Brien took no steps to ensure that Bryan Keough was adequately disciplined for his inappropriate behaviour with the children at the group home. Nor did Mr. O'Brien ensure that the allegations made against the staff by the children at the home were investigated further or reported to the police. Nor did Mr. O'Brien, after learning about the treatment of the children, develop a policy on the procedures for current CAS wards who allege they were abused by an employee of the CAS. Nor did he develop a written policy on reporting such internal matters to the police. Mr. O'Brien stated that "I didn't at the time but if you asked me if I were there today would I do it, I'd say yes, I'd develop a policy."

Mr. O'Brien knew that Derry Tenger, Michael Keough, and others dressed in black. Although he considered it peculiar, he did not take any action to ensure that they dressed differently. The executive director did not invoke any measures to ensure that the children in the Second Street home did not feel intimidated by the dark clothing worn each day by the supervisor and staff at the group home operated by the CAS.

Ian MacLean Is Unsuccessful at Introducing Position Changes at the Group Home

Derry Tenger was replaced by Dick Mulligan, and new staff were hired for the Second Street home. Ian MacLean joined the CAS of Stormont, Dundas & Glengarry in 1976. From June 1976 until February 1977, Mr. MacLean was the liaison between the agency and the Second Street home. When he assumed this position, he was told that staff at the home had been fired and that there had been excessive discipline of children at the CAS-operated group home. Mr. MacLean reported to Mr. Towndale and Mr. Devlin initially; after a month in his position as liaison, he reported solely to Mr. Devlin.

There were three male staff and six adolescent residents, mostly girls, when Mr. MacLean assumed the role as liaison of the group home. The three staff were John Primeau, Raymonde Houde, and Al Herrington. It quickly became apparent to Mr. MacLean that there were no policies in place or set routines at the Second Street home. Each day, the individual staff worker would decide what activities would take place at the home—for example, wake-up time, bedtime, and chores were left to the discretion of individual staff members.

It was Mr. MacLean's responsibility to develop a behavioural management program and a routine for the group home. He was also asked to develop a team approach for staff working with the children at the home. But it soon became evident to Mr. MacLean that it would be difficult to implement such programs, schedules, and team building at the home. Mr. MacLean did have meetings with staff, and he did develop protocols and programs. But he did not feel that he had the authority to require the staff at the home to adhere to his proposed schedules and to his suggestions regarding interactions with the children.

Mr. MacLean testified that it would have been beneficial if he had been fully apprised of the history of and treatment of the children at the Second Street group home when he became the liaison. He stated that he could have been more attentive to red flags regarding possible abuse—sexual or physical—of the children who resided in the home. He also stated that he would have had a better understanding of the children and would have ensured that the programming was tailored to their needs. He also claimed that, if he had had knowledge of the history of the treatment of the children, he would have taken appropriate actions to ensure that the current staff received adequate training regarding appropriate disciplinary measures. However, it is clear that Mr. MacLean did not take measures to obtain the particulars on the historical treatment of the children at the home before he became the liaison. He testified at the hearings that “there was no reason for me to do that and I was too busy, frankly.”

Mr. MacLean believed that it was important for female staff to be hired at the Second Street group home. As he said at the Inquiry, in assessing risk factors and considering “wise management” practices, Mr. MacLean thought female staff should be on duty, particularly in the evenings when the female wards were at the home. He spoke to Mr. O'Brien, Mr. Towndale, and Mr. Devlin about his concern and stressed that “we needed female staff in that home; that I felt very uncomfortable—that it was very unwise for them to have three male staff and the adolescent girls that were in that home.”

John Primeau was one of the staff at the home about whom Mr. MacLean had concerns. Mr. Primeau would routinely take female adolescents from the Second Street home on outings. Mr. MacLean made it clear to Mr. Primeau that he opposed this practice and considered it risky and dangerous. However,

Mr. Primeau did not adhere to Mr. MacLean's advice and continued to engage in this behaviour. Moreover, Mr. Primeau did not comply with the routine he had agreed to follow with Mr. MacLean regarding the activities and schedules for the children at the home. Mr. MacLean decided to raise Mr. Primeau's behaviour with his supervisor, Mr. Devlin, in July and August 1976. As Mr. MacLean said in his evidence, "The more I worked with John, the higher my anxiety level." John Primeau was always "distant" from Mr. MacLean; the CAS liaison "never felt" that Mr. Primeau "was a working member" or a "committed member to the team." In early September 1976, a female staff worker was hired for the Second Street home who, Mr. MacLean expected, would be the "eyes and ears" for him.

Despite Mr. MacLean's concerns about Mr. Primeau's refusal to follow the rules in the Second Street home and his continued excursions with female residents at the home, Mr. MacLean did not discuss with these adolescents what was going on during these outings. Nor did Mr. MacLean inform these teenagers of their rights in the event that anything untoward took place. This omission was despite the fact that he knew that children who have been abused often fail to disclose inappropriate behaviour for many reasons, including fear or guilt. In my view, Mr. MacLean failed to take appropriate action against John Primeau, a worker he knew to be acting contrary to the rules of the group home. He also should have taken some steps to satisfy himself that nothing inappropriate was happening between John Primeau and the adolescents in the home.

Had Mr. MacLean engaged the adolescents at the home in discussions, he would have likely learned about other questionable methods of discipline at the Second Street home, such as the improper use of restraints. He stated that he knew that restraints were being used on the children but was unaware of the particular techniques that were being practised. For example, one of the staff members, Raymonde Houde, told the Cornwall police in 1994 that a regular method of discipline was forcing the children to lie on their stomach with their hands behind their back while a worker sat on them. Mr. Houde stated that "[t]his method was shown to me by John Primeau and all the workers in the home used it." Despite the problems that had existed previously at the Second Street home when Mr. Tenger was the director, the CAS Board had not passed a written policy on discipline.

A former resident of the home alleged that a group home worker named "John" had fondled her and placed her under restraints. Mr. MacLean testified that he was unaware of sexual misconduct at the group home in 1976. As I discuss later in this chapter, allegations were subsequently made in 1994 by two former wards from the home that John Primeau engaged in sexual conduct with them. In an interview by a Cornwall Police Service Constable (Shawn White) in 1994, a girl alleged that Mr. Primeau sexually touched and sexually assaulted her.

In the early months of 1977, Mr. MacLean informed Mr. O'Brien that the operation of the group home was becoming too expensive for the CAS. In February 1977, the Board decided to close the Second Street home. Mr. MacLean understood that the reason for the closing was strictly financial and that it had nothing to do with any allegations of wrongdoing—physical or sexual—by staff to the children under the care of the CAS.

Jeannette Antoine Discloses to the CAS Abuse When She Was a Ward of the Agency

In 1989, Greg Bell and Suzie Robinson were assigned by the CAS to investigate allegations against Jeannette Antoine of physical abuse of her nine-year-old-child. It was during the course of this investigation that Ms Antoine disclosed to these CAS workers that she had been abused as a child when she was a ward of the Children's Aid Society.

One of the people Ms Antoine alleged had abused her was Bryan Keough, a colleague of Mr. Bell's. Over the course of a few meetings in 1989, Ms Antoine told Mr. Bell and Ms Robinson that she and other children had been abused by staff at the Second Street group home. She was particularly concerned that Bryan Keough remained in the employment of the CAS and continued to have contact with children. Mr. Bell joined the CAS of SD&G in 1982, several years after the Second Street home was closed by the CAS. Mr. Bell was disturbed to learn of the allegations of abuse at the group home. He contacted the Cornwall Community Police Service (CPS).

Mr. Bell reported Ms Antoine's allegations of historical abuse to Tom O'Brien, the executive director of the Children's Aid Society, and Bob Smith, a supervisor at the Society, on August 21, 1989. Mr. O'Brien instructed Mr. Bell and Ms Robinson to continue their investigation regarding Jeannette Antoine's child. In the meantime, the executive director reviewed the following documents: the statement signed by Ms Antoine, which provided details of her allegations of abuse when she was under the care of the CAS; Suzie Robinson's notes of her meetings with Ms Antoine; and minutes of the Personnel Committee meeting concerning the Second Street home, which had been placed in a confidential file.

On August 23, 1989, Mr. O'Brien instructed Mr. Bell and Ms Robinson not to concern themselves with Jeannette Antoine's allegations of historical abuse and told them he would contact her. That same day, he telephoned Ms Antoine and advised her that the CAS social workers to whom she had disclosed the allegations of historical abuse "would not be dealing with past issues since it was not part of their position," but that Mr. O'Brien was willing to meet with her. Ms Antoine told the CAS executive director that children at the group home

had been subjected to harsh corporal punishment. She also stated that there had been sexual abuse but it was not clear to Mr. O'Brien whether Ms Antoine, or the other children at the home, had been subjected to the sexual conduct. Jeannette Antoine could not understand why the CAS had not terminated the employment of Bryan Keough for his inappropriate behaviour at the Second Street group home.

Mr. O'Brien decided to discuss these issues with Angelo Towndale upon his return from holiday, as Mr. Towndale had been involved in the group home in the spring of 1976, when Mr. O'Brien was on sick leave. A meeting attended by Mr. Towndale, Mr. O'Brien, and Bill Carriere was held on September 8, 1989, to discuss what actions the CAS should take regarding Ms Antoine's "accusations and concerns." It was agreed that the president of the Board of the CAS should be advised of the allegations and that a meeting should be arranged with the Cornwall police and the Crown to receive their input. It was also suggested that Mr. O'Brien contact other CAS executive directors, such as those in Ottawa and Renfrew, to obtain information on how these agencies handled allegations of abuse by staff employed by the agency. Mr. O'Brien did not know how to deal with such allegations against CAS staff. The matter was also discussed with Lenore Jones, the program supervisor in Ottawa at the Ministry of Community and Social Services, who believed that action should be taken regarding these historical allegations of abuse. Ms Jones also recommended that an outside body, not the CAS of SD&G, ought to deal with these allegations. The September 8, 1989, notes of Mr. O'Brien say:

This case has been discussed verbally with our programme supervisor, Lenore Jones, who encouraged action and suggested that the Agency itself might not be the best body to deal with the present situation as our action could be perceived as whitewashing the situation.

As Mr. Carriere stated, the purpose of the September 8, 1989, meeting was to brainstorm on how to handle the serious matter of allegations of abuse against CAS staff, which was "new territory" for the agency:

We hadn't, certainly in my experience at the Agency up to this point in time, ever had anything like this and I'd be fairly certain that's why there's the reference to checking with other Children's Aid Societies because it's just completely new territory for us.

There was no policy or protocol regarding the procedure to follow when allegations of abuse were made against staff or employees of the CAS.

Mr. Towndale continued to believe that the behaviour of staff at the Second Street home had been completely unacceptable. The physical punishments had been excessive and there had been a sexual dimension to the treatment of the girls in the home. Mr. O'Brien, he said, had been "fully informed" of this immediately upon his return to the agency after his sick leave in 1976.

On September 25, 1989, a meeting was held with Crown Attorney Don Johnson, Deputy Chief Joseph St. Denis of the Cornwall police, and Inspector Richard Trew. Strapping at the group home was discussed, and it was concluded that this did not constitute a violation of the *Criminal Code*. It was proposed that Mr. O'Brien send a registered letter to Jeannette Antoine attaching the CAS complaints procedure and inviting her to again meet with him. It was also suggested that, if Ms Antoine did not take any further action, there need be nothing further done.

A few days later, Mr. O'Brien met with Greg Bell, Suzie Robinson, Bill Carriere, and Angelo Towndale to review Ms Antoine's statement. In Mr. O'Brien's opinion, some of her allegations were true, others were exaggerated, and some lacked merit. Mr. Bell and Ms Robinson made it clear that it was Ms Antoine's desire that Bryan Keough's employment be terminated by the CAS. Questions were raised at the meeting regarding the "wisdom" of asking Ms Antoine to meet with Mr. O'Brien again, given that she considered the CAS executive director "as part of the system for which she really has little use."

On September 29, 1989, after again meeting with Mr. Towndale and Bill Carriere, Mr. O'Brien and his two senior officials decided the agency should "very quickly contact the police again," because information contained in Suzie Robinson's notes suggested that "inappropriate sexual behaviour" was engaged in by "staff when the group home was in operation." They decided that the police should be given copies of Jeannette Antoine's statement, Suzie Robinson's notes, as well as the minutes of the Personnel Committee meetings, once this was discussed with the president and vice-president of the CAS Board.

On October 2, 1989, Mr. O'Brien met with Deputy Chief St. Denis and Staff Sergeant Brendon Wells. The Deputy Chief was surprised that Mr. O'Brien was meeting with him again, given that Mr. O'Brien had recently met with the Cornwall police and the Crown to discuss the Antoine allegations of historical abuse. Mr. O'Brien explained that when he re-read Ms Robinson's notes on the allegations of sexual behaviour by staff, it "changed the situation" for him, and, as a result, Mr. O'Brien "felt" that he had "no option" but to contact the Cornwall police again. Mr. O'Brien also spoke to Crown Attorney Don Johnson to convey the information about the sexual misconduct alleged by Ms Antoine and offered to send the material to the Crown. Mr. Johnson replied that this was not necessary, as the police would notify him if they intended to pursue the matter.

There are no notes or records from Mr. O'Brien to confirm that he spoke to Bryan Keough in September 1989 to discuss these allegations of abuse. Mr. O'Brien testified that, despite receiving allegations against Mr. Keough that he sexually and physically abused children under the care of the CAS, he did not consider suspending his employment. Mr. O'Brien said, "I was unsure of what to do because I wasn't sure of the validity of some of the information." Yet Mr. Keough had admitted to inappropriate conduct with wards of the CAS as early as 1976.

Mr. O'Brien claimed that he was not concerned about the fact that Mr. Keough continued to supervise children under the care of the CAS. Yet Mr. O'Brien acknowledged that he did not agree with Bryan Keough's view of physical discipline and considered it excessive, rigid, and unduly harsh. At that time, Mr. Keough trained foster parents and supervised six specialized foster homes. Mr. O'Brien allowed Mr. Keough to continue supervising foster children and to provide advice and guidance to foster parents on such matters as physical discipline of children under their care. Mr. O'Brien testified that, although this did not concern him at the time, in hindsight, had he thought about the issues then, he "would have been much more cautious."

Mr. Keough remained a child protection worker at the CAS of SD&G and continued to have contact with foster children. Upon learning of Ms Antoine's allegations, Mr. O'Brien did not take any measures to suspend Mr. Keough or otherwise restrict his duties. Mr. O'Brien took the position that the Cornwall police were investigating the matter, and therefore it was not necessary for him to meet with Mr. Keough in 1989 to discuss the allegations or to impose any disciplinary measures on his staff member.

Mr. O'Brien acknowledged in his testimony that having an outside agency conduct an investigation of an employee at the CAS of SD&G would "probably be more objective."

Mr. O'Brien telephoned Staff Sergeant Wells at the Cornwall Police Service on October 23, 1989, to find out the status of the case. He was told that Staff Sergeant Wells had been away on holiday, and that the Antoine case had been turned over to Constable Kevin Malloy. The CAS executive director was told that when Constable Malloy reported to Staff Sergeant Wells on the Antoine matter, the CAS would then be advised.

Time passed. As is discussed in Chapter 6, on the institutional response of the Cornwall Police Service, Mr. O'Brien again contacted the CPS in December 1989 to discuss the status of the Antoine investigation with Constable Malloy. The Constable reported that he had approached Jeannette Antoine regarding her desire to pursue the investigation, but that she had said she would think about it. He

told Mr. O'Brien that he intended to "close" the case before Christmas but, in a subsequent conversation, Constable Malloy told Mr. O'Brien that the case would be closed in January 1990, as he did not have the time to do so in 1989.

Tom O'Brien inscribed the following in his notes of December 22, 1989: "If Det. Malloy does not contact me again prior to the middle of January, I will get in touch with Deputy Chief Joe St. Denis to learn of the current situation."

The delays and problems in the CPS investigation of the Antoine matter are discussed in detail in Chapter 6, on the institutional response of the Cornwall Police Service.

Bryan Keough's Application to Adopt a Child

Bryan Keough was not aware of the Antoine allegations of abuse until February 1990, when he applied to adopt a child who was under the care of the CAS. Mr. Keough had developed a relationship with this child.

On January 23, 1990, senior CAS officials met to discuss how the agency should handle Bryan Keough's application to be a foster parent with the intention of adopting the child. (At this time, Richard Abell had recently joined the agency and was clinical director.) Tom O'Brien, Richard Abell, and Ian MacLean thought that an outside agency should be responsible for the home study for Mr. Keough's application. These senior CAS officials had two concerns. First, if CAS staff from Stormont, Dundas & Glengarry conducted the home study, "would it not appear to indicate that we are quite prepared to seriously consider the Keoughs as foster parents with the further intention of adopting the child"? Second, the officials questioned whether a home study should even be undertaken at this time, as the outcome of the investigation by the Cornwall police was not yet known. It was uncertain whether the police and Crown would proceed with criminal charges as a result of the complaint by Jeannette Antoine. It was decided at this January CAS meeting that Mr. Keough would be advised by his supervisor, Ian MacLean, that an external agency would perform the home study for his adoption application.

Tom O'Brien contacted Constable Kevin Malloy to inform him that Mr. O'Brien would be disclosing to Bryan Keough the allegations made against him by Ms Antoine. Constable Malloy told the executive director that he intended to meet with the Crown to determine whether the criminal case should be pursued, as this still had not yet been determined.

In about the middle of February 1990, Mr. O'Brien raised with Mr. Keough the allegations of abuse that Ms Antoine had made in the past five or six months. The CAS executive director also discussed with Mr. Keough his application to become a foster parent. Upon learning of these allegations, Mr. Keough told Mr.

O'Brien that he no longer wished to proceed with the adoption. Mr. O'Brien did not discuss any possible disciplinary measures that might be imposed on Mr. Keough. Mr. Keough also advised Mr. O'Brien that he would be leaving the agency to attend theological college.

At no time did the CAS suspend the employment of Bryan Keough. In fact, it never conducted an investigation of Mr. Keough as a result of the allegations made by Ms Antoine. Even after speaking to Constable Malloy, Mr. O'Brien did not initiate a CAS investigation of the allegations. Mr. O'Brien acknowledged that, had the information regarding Mr. Keough arisen from another person in the Cornwall community, the agency would likely have conducted an investigation of the matter. The former CAS executive director acknowledged that, "in hindsight ... I'm not positive about some of the conclusions I reached in all instances."

Bryan Keough left the employ of the Children's Aid Society in June 1990 and moved to Regina to obtain a divinity degree. On January 17, 1990, Mr. Towndale signed a positive letter of reference for Mr. Keough's application to the Canadian Theological Seminary. As I discuss in Chapter 6, on the institutional response of the Cornwall Police Service, Mr. Keough was contacted in 1994 by the CPS regarding the Antoine allegations of abuse.

As Mr. O'Brien prepared to leave the CAS in May 1990, he drafted a memo to his successor, Richard Abell, regarding the "messy situation" involving the Antoine allegations. CAS officials still had not heard from the CPS or the Crown regarding the outcome of the criminal investigation and were not convinced they ever would. In a memo to Mr. Abell in May 1990, Mr. O'Brien wrote:

I did follow up several times verbally with Detective Malloy, but he had not on any occasion received a letter from the Crown Attorney and I am not sure that he ever will. I am not sure there is much point in your pursuing the matter with the Crown Attorney.

Mr. O'Brien further said in his memo to Mr. Abell:

As for notifying the Executive, I have not done that but I have discussed the matter verbally with the Board President, and you might wish to discuss it with him in your first meeting to determine how you would inform the Executive of the current status of this particular case.

As for Lenore Jones, I think you should advise her in writing that this case is no longer a contentious one with us, in that the police to whom the material had been given have made the decision not to proceed.

Richard Abell Succeeds Tom O'Brien As Executive Director of the Children's Aid Society

After Mr. O'Brien transferred the Antoine file to his successor, Mr. Abell, the new CAS executive director did not consider pursuing the Antoine matter further concerning the allegations of abuse against Bryan Keough. Mr. Abell testified that he did not consider an internal investigation of the allegations of abuse against his employee. At that time, he had no experience at the CAS with the suspension of an employee without pay while an investigation took place. Mr. Abell testified that this was "new ground" for him and that he was "feeling [his] way through it." Nor was there a suggestion from officials of the Ministry, to Mr. Abell's recollection, that an internal investigation of this issue ought to be conducted by the CAS.

Mr. Abell testified that the current practice of the CAS with respect to such issues has changed—the matter would be pursued by the agency, the individual in question might be removed from his or her duties, and another CAS agency or third party would be asked to conduct the investigation of the allegations against the CAS staff worker in question.

Jeannette Antoine Requests Disclosure of Her File and Renews Allegations of Abuse

On October 7, 1991, Greg Bell received a call from Jeannette Antoine requesting a copy of her file from the Children's Aid Society. Mr. Bell explained that Ms Antoine's file had been transferred to another CAS worker, Debbie Cleary. File disclosure was not an area in which Greg Bell generally had involvement at the CAS.

Mr. Bell discussed her request with his supervisor, Bill Carriere, as well as Mr. Towndale and supervisor Cam Copeland. Ms Antoine had said that she wanted to read her file for a number of reasons, which included finding out why she and her three sisters had been removed from the care of their parents.

Mr. Bell contacted Ms Antoine the following day and was informed that she was planning to initiate a lawsuit against the CAS. Mr. Bell suggested that she prepare a list of the information she was seeking, such as the dates of her placements and the various homes in which she resided as a ward of the Children's Aid Society.

The CAS executive director became involved. Mr. Abell decided to write to Susan Bihun, the Ministry of Community and Social Services program supervisor to whom he reported. Ms Bihun had succeeded Lenore Jones at the Ministry. Mr. Abell was concerned that the Antoine matter might result in publicity in the community, and he wanted to notify the Ottawa office of the Ministry that this might attract media attention.

In the October 15, 1991, letter to Ms Bihun, Mr. Abell discussed the history of the Second Street group home, beginning in March 1976. He discussed the reports of excessive corporal punishment, the highly questionable disciplinary practices, and the involvement of the CAS Board. Mr. Abell stated that the issue of the home had arisen again in 1989, when two CAS staff at his office were investigating allegations of abuse of Ms Antoine's child. He discussed in the letter to Ms Bihun Mr. O'Brien's interactions with the Cornwall police and the Crown.

Mr. Abell explained that Ms Antoine had contacted the CAS the previous week asking for information in her file, as she was contemplating a lawsuit against the agency for mistreatment when she was a child under its care. He told his supervisor that there was "evidence of improper behaviour management practices on the part of our agency staff" at the Second Street home. Mr. Abell indicated that he was planning to convene a case conference to review the matter.

Mr. Abell called Jeannette Antoine on October 15, 1991, and said he would like to discuss her allegations against the agency. According to Mr. Abell's notes of the telephone conversation, Ms Antoine replied, "I don't mind ... [I]t will all soon be public anyway." They arranged to meet a few days later.

Mr. Abell testified that he felt he had an obligation to speak to Ms Antoine directly; she was a former ward, she had made serious allegations against the CAS, he wanted to show her that someone was ready to listen, and he wanted to hear what she had to say and to give her a full hearing.

Mr. Abell called Constable Kevin Malloy. When they connected on October 16, 1991, Mr. Abell recounted that Ms Antoine had told Greg Bell that Constable Malloy had discouraged her from pursuing the matter when he had carriage of the file in October 1989.

Mr. Abell met with Jeannette Antoine on October 18, 1991. It was immediately apparent to Mr. Abell that her anger was directed at Bryan Keough for his treatment of her when she was a child under the care of the CAS. Ms Antoine was concerned that Mr. Keough continued to be a staff worker at the CAS, although he had in fact left the agency the previous year. Ms Antoine did not think that her allegations of abuse had been received with the seriousness they deserved from the agency. She was upset that no criminal charges had been laid by the police and she wanted an apology from the Children's Aid Society. Mr. Abell's notes of October 18, 1991, state:

... she wants Brian [sic] charged, and an apology from the Society for what was done to her. She has spoken to a lawyer about charges or a suit ... She mentioned having previously spoken to Kevin Malloy at the CPS, but was vague regarding a comment about the length of time since the events occurred [sic].

Mr. Abell did not know whether the CAS could provide Ms Antoine with the requested apology; it was “tricky ground,” particularly if a person is planning to sue the agency. There are “issues of liability and corporate risk” and the CAS had to “be cautious.”

Ms Antoine expressed concern to Mr. Abell that, if she pursued a legal claim against the CAS, the agency might take her children from her. He assured her that the CAS would not respond in this way. At the conclusion of the meeting, Mr. Abell invited Ms Antoine to contact him if she had any other concerns or wanted to discuss the matter further.

Mr. Abell gave further thought to Ms Antoine’s request for an apology and decided to seek advice. On October 29, 1991, he sent a letter to Ms Antoine in which he tried to express compassion and support and provide some recognition of the treatment she had sustained while under the care of the CAS. As he made clear in his testimony, this was not an apology. Mr. Abell wrote:

I have spent some time reading the record of your time in the care of this Society. It is evident that your very first months were bad for you and all of your family. As well, a number of social workers really did try hard to find you and Lorraine a permanent family for you to grow up in.

...

The discipline imposed on you and the other young people was harsh, and was definitely seen as such when it came to the attention of the Board of Directors ...

Mr. Abell further wrote that, if Ms Antoine wanted criminal charges laid against Bryan Keough, she should pursue this matter with the Cornwall police. By this time, Mr. Keough had left the province.

A few months later, in February 1992, Mr. Abell instructed one of the child protection staff, Carlene Cummings, to close the Antoine file. Mr. Abell made this decision because, at this time, there was no indication that the Cornwall police would pursue the matter further, nor had Ms Antoine initiated a civil lawsuit against the agency. In Mr. Abell’s opinion, there were no further steps the CAS ought to take regarding the allegations of Jeannette Antoine. However, Ms Antoine again contacted Mr. Abell about five months later. According to the notes of Staff Sergeant Garry Derochie, who conducted a review of the Antoine case for the Cornwall police, Ms Antoine spoke to Mr. Abell in July 1992 to complain about the inattention given to her case. Mr. Abell told Ms Antoine to contact the police. At the hearings, Mr. Abell could not recall this conversation with Ms Antoine.

*Geraldine Fitzpatrick and Constable Sebalj Interview Jeannette Antoine:
An Unauthorized CAS Investigation*

It was in the late fall of 1993 that Geraldine Fitzpatrick, a CAS staff worker, arrived at the Cornwall police station to meet Constable Heidi Sebalj. As I discussed in the context of Project Blue and the David Silmser/Father Charles MacDonald investigation, when Ms Fitzpatrick arrived that day she noticed that Constable Sebalj was distraught. Constable Sebalj told Ms Fitzpatrick that her colleague at the CAS, Greg Bell, had come to the police station and had photographed her file of the Silmser investigation. Constable Sebalj told Ms Fitzpatrick that no criminal charges had been pursued against the priest, who had allegedly sexually abused a youth. The Constable explained that this was a result of the advice from the Crown and, as well, because the Diocese had offered the victim a financial settlement.

It was in the context of this discussion that Constable Sebalj asked Ms Fitzpatrick if she had information on the Second Street group home. Constable Sebalj asked Ms Fitzpatrick for her assistance in conducting an interview with a woman in a historical abuse case. This woman claimed she had been abused as a child when she was a ward of the CAS living at this group home. This woman was Jeannette Antoine.

The interview with Ms Antoine took place on November 12, 1993. Ms Fitzpatrick did not inform anyone at the CAS office that she was interviewing Ms Antoine with Constable Sebalj. Not only did Ms Fitzpatrick not advise her supervisor or other agency officials, she did not open a CAS file on the matter. Ms Fitzpatrick explained that the interview took place on a day that she had “booked ... off,” and that she was technically not on duty. Ms Fitzpatrick took the position that she was not at the Antoine interview in her official capacity as a child protection worker but rather to assist Constable Sebalj in her assessment of the validity of the allegations. The interview took place at 340 Pitt Street in the Youth Bureau at the Cornwall Police Service.

Ms Fitzpatrick asked Jeannette Antoine most of the questions during the interview. Ms Antoine stated that, when she was living at the Second Street group home as a child under the care of the CAS, she was physically and sexually abused. She told the CAS worker and CPS officer that she and other children at the home were hit and forced by male staff to strip down to their bra and underpants while they cleaned the home. She described Derry Tenger, who wore black clothing, as well as the room in which the children were beaten. Ms Antoine also made allegations against CAS child protection worker Bryan Keough. Ms Antoine stated that she believed that Mr. Keough had had sexual relations with her sister, impregnating her with a child whose name was also Brian.

Jeannette Antoine told Constable Sebalj and Ms Fitzpatrick that she and other children at the Second Street group home had run away because of their poor treatment. They had been picked up by the police and transported to the CAS office. At that time, the children described to the CAS the punishments they had sustained. Ms Antoine also said that she had been sexually assaulted while in foster care. Ms Antoine was able to identify by first name and surnames a number of children at the Second Street group home. She also identified Heather Tenger, Derry Tenger's daughter, as well as Ms Gratton and CAS worker Françoise Lepage. Ms Antoine alleged that she had recounted her experience at the Second Street group home to several CAS staff, including Greg Bell, Bill McNally, and Richard Abell. She stated that at the time the Second Street home existed in the 1970s, as well as in the late 1980s, the agency had been told of the abusive acts committed at the home on children who were under the care of the CAS. At the conclusion of the November 12, 1993, interview, Constable Sebalj informed Ms Antoine that she intended to pursue these discussions of allegations of abuse.

Ms Fitzpatrick testified that she was overwhelmed by the information conveyed by Jeannette Antoine against the CAS of SD&G. Very serious allegations had been made by this woman. She asked Constable Sebalj what she planned to do with this information. According to Ms Fitzpatrick, Constable Sebalj stated that she intended to take the audiotapes of the interview to a lawyer and that she would not disclose this information to her supervisor, Staff Sergeant Luc Brunet, as he was a member of the Board of the Children's Aid Society. In Constable Sebalj's opinion, this placed Staff Sergeant Brunet in a conflict of interest situation. This decision not to disclose the interview to the CPS or to her supervisor, Staff Sergeant Brunet, "stunned" Ms Fitzpatrick.

Constable Sebalj, according to Ms Fitzpatrick, said she would be in contact with her in two weeks time regarding the Antoine allegations. However, Constable Sebalj never contacted Ms Fitzpatrick respecting the Antoine matter.

It was Ms Fitzpatrick's evidence that Constable Sebalj had told her not to reveal the Antoine interview to her superiors at the CAS, as it would constitute an obstruction of the criminal investigation. Ms Fitzpatrick was distressed by the information that had been conveyed by Jeannette Antoine—namely, that people in positions of trust and power, and individuals entrusted by the CAS to care for children, may have abused children under their care. She was also very concerned that Ms Antoine had relayed the information about the Second Street home on two occasions to the CAS but that no action appeared to have been taken by the agency on this matter.

After returning to work at the CAS, Ms Fitzpatrick did not discuss with either her supervisor or her colleagues at the CAS the interview she had had with Jeannette Antoine. Nor, as I mentioned earlier, did she open a file or prepare

notes regarding her interaction with the former ward of the CAS. Geraldine Fitzpatrick did not conduct further inquiries regarding the Second Street home, such as with respect to the individuals who had been identified by Ms Antoine as residents of the home.

After the Christmas holidays, Ms Fitzpatrick decided to disclose the contents of the November 1993 Antoine interview to some of her colleagues, including Carleen Cummings. She also said that she subsequently shared this information with Patricia Garrahan, who, according to Ms Fitzpatrick, was dating Charlie Greenwell, a news broadcaster at the local TV station.

Geraldine Fitzpatrick testified that she has not had any communication with Constable Heidi Sebalj since the November 1993 Antoine interview.

As mentioned, Geraldine Fitzpatrick chose not to disclose the interview that she had had with Jeannette Antoine to her supervisor or senior officials at the CAS. Richard Abell, executive director of the CAS, had no knowledge of the Fitzpatrick/Sebalj interview of Ms Antoine until about two years later, when, in August 1995, Geraldine Fitzpatrick disclosed the interview that had taken place at the Cornwall Police Service in November 1993 and the allegations that had been made by Jeannette Antoine. It was clearly inappropriate, Mr. Abell said, for Ms Fitzpatrick to have involved herself in that interview without authorization. I agree and am of the view that Ms Fitzpatrick should have advised her supervisors of this investigation.

Antoine Allegations Against CAS Publicized in the Media

Jeannette Antoine testified that, in early 1994, she was approached by reporter Charlie Greenwell, who was interested in obtaining information on her care as a child when she was a ward of the Children's Aid Society. Although Ms Antoine signed a consent form allowing Mr. Greenwell to access her CAS file, he was apparently unsuccessful in retrieving this information from the agency. Nevertheless, Mr. Greenwell interviewed Ms Antoine, and a story was broadcast on television regarding her treatment as a child under the care of the CAS at the Second Street group home. The report was televised on CJOH, a local stations.

The media stories on Jeannette Antoine occurred immediately after media publicity in the media about David Silmser's allegations of sexual abuse. The stories in January 1994 on television and in print were of concern to the executive director of the Children's Aid Society of Stormont, Dundas & Glengarry. Allegations of institutional cover-up, which included the Children's Aid Society, were reported in the media.

On January 12, 1994, Mr. Abell received a letter from Deputy Chief St. Denis confirming that the Cornwall police would be examining its investigation of the

Antoine allegations of abuse and that CAS staff would likely be interviewed. By January 1994, Mr. Abell knew that Constable Shawn White had been assigned to the Antoine investigation and that Staff Sergeant Derochie would be reviewing the earlier police investigation that had begun in 1989.

The following day, Richard Abell issued a press release, which essentially stated that the CAS had taken action with respect to the Antoine allegations.

On January 14, 1994, an article entitled "Police review abuse claim at former CAS group home" was published in the *Cornwall Standard-Freeholder*. Mr. Abell was quoted in the article as stating that the CAS had acted very quickly and decisively. He said that the incident was never reported to the police. Mr. Abell agreed in his evidence that, regardless of whether a legal requirement existed in the 1970s to report such cases to the police, it would have been appropriate for the CAS to have notified the local police of the allegations of abuse made by the children in the Second Street group home.

Staff Sergeant Derochie informed Mr. Abell a few days later (on January 19, 1994) that the CPS had had discussions with Jeannette Antoine, who wanted criminal action taken against CAS staff for acts of physical and sexual abuse. The Staff Sergeant, who was re-investigating the 1989 Antoine complaint to the CPS, asked Mr. Abell for information in the Antoine file as well as for the names of members of the police force who were on the CAS Board of Directors at that time. After consulting with CAS legal counsel, Mr. Abell told Staff Sergeant Derochie that he could view the CAS file and also could remove any CAS material if a warrant were obtained. He also told the Staff Sergeant that there was no record of any CPS officer on the CAS Board in 1975 to 1976, but that Constable Kevin Malloy was a member of the Board from March 1990 until April 1992. In other words, when Constable Malloy was involved in the investigation of the Antoine complaint, he was a member of the CAS Board of Directors. Staff Sergeant Derochie informed Mr. Abell later in January 1994 that Suzanne Lapointe, one of Ms Antoine's sisters, alleged that she had been physically and sexually abused while in the care of a foster family.

The 1994 police investigation by Constable Shawn White of the Antoine allegations, as well as Staff Sergeant Derochie's review of the manner in which the CPS conducted itself in the earlier investigation, are discussed in detail in Chapter 6, on the institutional response of the Cornwall Police Service.

In November 1994, the CAS was informed of the outcome of Constable White's investigation. Acting Chief Carl Johnston and Inspector Richard Trew met with Mr. Abell and Mr. Towndale at the CAS office on November 3, 1994. Constable White had concluded that there was insufficient evidence to support criminal charges with regard to the Second Street home or the foster homes. It was made clear to Mr. Abell that although a number of other children had allegedly been abused, there had been no follow-up by the police.

Mr. Abell was “struck” that former wards of the CAS, not solely Jeannette Antoine, had alleged abuse and that the allegations involved not only physical abuse but also sexual abuse. Mr. Abell did not ask the police for the names of the former wards. Nor did Mr. Abell follow up with Suzanne Lapointe regarding her allegations of abuse in a foster home.

Mr. Abell acknowledged that, in retrospect, he should have asked the CPS for further details and should have pursued allegations of abuse, which were extensive. He agreed that he should have been more proactive and that this was a failing on his part. These former wards were now struggling as adults and needed support. Mr. Abell also testified that, had he had this information earlier, he would have had a different perspective and been more sympathetic to Jeannette Antoine. He also testified that she was part of a larger set of circumstances that had called for much more interest and activity on his part than he had given it at the time.

Mr. Abell sent a memo to CAS staff alerting them to a civil lawsuit by Ms Antoine and informing them that the Cornwall police would not be laying criminal charges. He also wrote a press release on November 4, 1994, to the effect that the CPS had decided, after a lengthy and exhaustive criminal investigation, not to lay charges. Neither in the memo to his staff nor in the press release did Mr. Abell indicate that a number of former wards had alleged that they, too, had been abused while in the care of the CAS.

Response to Reported Allegations at the Second Street Group Home

Although it was operational for only two years, the Second Street group home was an extremely negative experience for many of its residents. It was also, as I have noted throughout this section, the focus of a far from ideal institutional response to allegations of abuse, both sexual and physical, allegedly perpetrated by its own employees. As noted by Jeannette Antoine in her testimony, things at the home may have been completely different but for the sudden death of its initial director, Rod Rabey, during its first year in operation. It was during the first three months after his death, when Derry Tenger was the home’s director, that the vast majority of the abuse and other improper conduct occurred.

Although I am critical of some of the decisions made by Angelo Towndale during his handling of the allegations made by residents in the Second Street group home, I acknowledge that he was the acting director while Mr. O’Brien was away. When this situation arose, Mr. Towndale acted reasonably quickly, an investigation was conducted, and in the end many of the staff involved were dismissed. I was impressed with Mr. Towndale’s candour and his obvious compassion for children. He readily admitted errors he had made and expressed regret for some of his decisions. I found him to be an honest and credible witness.

Although the response of the CAS of SD&G to the allegations of abuse at the Second Street group home was not ideal, the CAS managers and employees involved were, for the most part, caring, dedicated professionals who were, unfortunately, ill-equipped to deal with the challenges they faced in the mid-1970s, when various incidents of abuse and alleged abuse occurred.

Earl Landry Jr.

In the late 1990s, Earl Landry Jr., the son of the former chief of the Cornwall Community Police Service (CPS), was convicted of various sexual offences involving children and youth. The Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) became involved with Mr. Landry Jr. in the 1990s, both in an investigative capacity and with reference to the placement of a CAS ward, in his home. Prior to this time, the CAS of SD&G was made aware of allegations of abuse against Earl Landry Jr. in 1985.

Earl Landry Jr. Is Named As an Alleged Perpetrator

In 1985, the CAS of SD&G conducted a joint investigation with the Cornwall Police Service into allegations of sexual abuse made by C-51 against Gary Seguin, who was inviting children into his home and employing them to assemble curtain rods. Mr. Seguin was ultimately charged and prosecuted. CAS worker Jean Dupuy was assigned to investigate the allegations on behalf of the CAS. Bill Carriere was his supervisor.

C-51 also made an allegation of abuse against Earl Landry Jr., who, at the time, was employed by the City of Cornwall Parks and Recreation Department as the caretaker at King George Park in Cornwall. According to police notes, on July 8, 1985, Sergeant Ron Lefebvre of the Cornwall Police Service met with Jean Dupuy and Bill Carriere to discuss the investigation into Earl Landry Jr. and Gary Seguin. (The CPS investigations of Earl Landry Jr. are discussed in Chapter 6, on the institutional response of the Cornwall Police Service.) Although I did not have the benefit of seeing any notes taken by the CAS workers during this meeting, notes made by Jean Dupuy on July 9, 1985, indicate that he was advised by Sergeant Lefebvre that C-51 alleged that he had been sexually assaulted by "an Earl Landry care taker of King George Park."

CAS Receives a Letter From Dr. Park Containing Clear Allegations Against Earl Landry Jr.

In or around mid-September, Mr. Dupuy received a letter from Dr. Malcolm Park, Chairman of the Child Protection team at the Children's Hospital of Eastern Ontario, in Ottawa. The letter stated that C-51 and his brother alleged that they

had been sexually molested by Gary Seguin and Earl Landry Jr. Bill Carriere explained that the medical staff at the Cornwall hospital knew that the CAS was working with C-51 and that there was a file on the family. The letter contained unequivocal and specific details of the allegations against Mr. Landry Jr. In fact, Mr. Carriere described it as “one of the stronger letters” he had seen in his career.

Although he could not recall if Mr. Dupuy had showed him this letter, Mr. Carriere testified it would have been his normal practice to do so and thought it was likely that Mr. Dupuy had brought it to his attention. According to Mr. Carriere, Mr. Dupuy also should have brought it to the attention of the police. Mr. Carriere did not know whether the police were informed of this letter, but he testified that he “would be surprised” if Mr. Dupuy did not bring this matter to their attention.

Jean Dupuy provided a statement to Sergeant Brian Snyder on December 19, 2000, regarding the letter from Dr. Park and the allegations of sexual abuse by Earl Landry Jr. contained therein. Mr. Dupuy was not able to provide an explanation as to why the information was not investigated or whether it was passed on to the Cornwall police. He stated that the normal procedure would be to share all relevant information with the police but, without his case notes, it was not possible to determine if this had occurred.

In my opinion, the information contained in this letter should have been turned over to the police, whether or not the CAS conducted its own investigation.

The CAS Does Not Investigate; Earl Landry Jr. Not a “Caregiver”

The CAS of SD&G did not conduct an investigation into Earl Landry Jr. because he was not considered a “caregiver” and therefore fell outside the CAS mandate. Mr. Carriere acknowledged that this position was taken despite the fact that Mr. Landry Jr. worked at a park used by children on a regular basis. He explained that, in 1985, there was a more rigid approach to deciding which cases the CAS would pursue. The standards and guidelines in existence at the time related more to abuse within the family. According to Mr. Carriere, he broke new ground when he became a supervisor by expanding that definition to include situations beyond the family. His feeling was that, in 1985, a park caretaker did not fit within that definition. It would be included today.

Although the abuse allegedly committed by Mr. Seguin was also outside the family, Mr. Carriere explained that because Mr. Seguin invited children into his home, employed them, and was responsible for them, the CAS investigated him. According to Mr. Carriere, it was not the expectation of the CAS of SD&G that a caretaker in a park was responsible for children. He acknowledged that, in order to determine if Earl Landry Jr. was a caregiver, one would have to know what interaction he had with the children. Based on the information in Dr. Park’s

report, he was taking boys into the clubhouse, where he sexually assaulted them. According to Mr. Carriere, this was no different from a stranger taking a child into a car and molesting him or her.

Bill Carriere agreed that the CAS needs to have a certain amount of information before it can determine if a situation falls within its mandate. He was shown the statement of C-53, a victim who as an adult came forward with allegations against Earl Landry Jr. It was taken by Cornwall Police Constable Brian Snyder on June 10, 1997. In this statement, C-53 indicated that he knew Earl Landry Jr. from the park and that Mr. Landry Jr. would take kids for rides in his car and buy them popsicles. C-53 described being invited to swim at Earl Landry Jr.'s house and feeling awkward when Mr. Landry Jr. changed in front of him. He went on to describe an incident of abuse that occurred in 1983 or 1984. Mr. Carriere admitted that, if the CAS had had this information in 1985, it would have responded differently. He agreed that, if in 1985 the CAS had sought out more information, it may have discovered that Earl Landry Jr. fit within the definition of caregiver in the same way Gary Seguin did.

Bill Carriere testified that, given Mr. Landry Jr.'s position as a caretaker in a park, there would be many questions asked today that were not asked in 1985.

No Reference to Earl Landry Jr. in CAS Case Notes

Not only did the CAS not investigate Earl Landry Jr., but Jean Dupuy's case notes with respect to C-51 do not make reference to the allegation against him. Bill Carriere testified that there should have been a reference to Earl Landry Jr. in the file. Even if the CAS did not consider him as being in a caregiver role, and therefore not within its mandate, there should have been some discussion within the agency about the allegations. Mr. Carriere acknowledged that the records should have had more detail. He signed off on the closing of the file on C-51 in 1986 but testified that he probably was not conscious of Mr. Landry Jr. When he saw the recording, he was not aware of its deficiencies. In addition, he explained that, at the time, he would often only see sections of the file and not the entire file at once, whereas today everything is electronic so the entire file can be viewed at once.

The Campbell Case

The CAS of SD&G became aware of allegations of sexual abuse against Earl Landry Jr. but did not investigate because he was not considered a caregiver and therefore was outside the CAS mandate. This is in stark contrast to how the CAS handled the case of Bernie Campbell, who was a volunteer coach for various sport teams for the Parks and Recreation Department. Mr. Carriere and Mr.

Dupuy were both involved in the Campbell case. Upon being notified of potential abuse, Mr. Dupuy notified the police within a day. He attended the next day with the alleged child victims and they gave the police statements. Mr. Campbell was charged, and the CAS made a decision to contact the department manager who supervised him, which was done within days. In this case, the CAS reacted very quickly. Mr. Campbell was charged and convicted in March 1986. Although Earl Landry Jr. was only a caretaker, as opposed to a coach, he had equal access to and opportunity to approach the children attending the same recreation facilities.

An Unfortunate Failure to Investigate

There are two issues with respect to the handling of the Earl Landry Jr. case by the CAS of SD&G. The first is the decision not to investigate, and the second is the adequacy of information sharing and record keeping. With respect to the first issue, I appreciate that the definition of caregiver was less expansive in 1985 than it is today. However, in my opinion the facts warranted at least some investigation on the part of the CAS to allow them to make an informed determination about whether or not Earl Landry Jr. was a caregiver. The issue of who is a caregiver remains unclear. For example, a caretaker of a park that children frequent year round, similar to a caretaker in a school, is more likely to be considered a caregiver than a caretaker in a factory or workplace where children seldom visit. Mr. Carriere testified that, when looking at the definition of “caregiver,” perhaps we need to consider whether there are certain locations in which any adult present would be considered a caregiver regardless of their relationship with the children—for example, an electrician doing work in a park. It is clear that the concept of caregiver, which is currently defined in the eligibility spectrum, needs to be more clearly defined. There should also be consistency in the language used in the eligibility spectrum and the *Child and Family Services Act*, the latter of which uses the term “in charge of a child” rather than “caregiver.” The current definition of caregiver and my recommendations for clarification will be discussed further in the conclusion to this chapter.

The second issue in this case is insufficient record keeping and the lack of information sharing. I have already commented that the letter from Dr. Park, or at least some of the information in the letter, should have been shared with the police. Given the lack of remaining records from both the CAS and CPS, it is not possible for me to conclude if it was. It is also my view that the fact that C-51 and his brother made allegations against Earl Landry Jr. should have been recorded in the family file. As Mr. Carriere acknowledged, because Earl Landry Jr.’s name was not included in the recording, even if the CAS of SD&G had an internal register or tracking system, his name would not be on it and so would not have been available to workers who might become involved with him at a later time.

Earl Landry Jr. did, in fact, come to the attention of the CAS again, in 1993, for two reasons. He and his wife applied to become foster parents to C-54, and an anonymous complaint of sexual abuse against a young person by Mr. Landry Jr. was reported by the alleged victim's psychologist. It is unfortunate that a more complete investigation was not conducted into Earl Landry Jr. in 1985. A more complete CAS and/or joint CAS/CPS investigation may have prevented the victimization of the children Mr. Landry Jr. abused after 1985.

1993: Earl Landry Jr. Becomes a Foster Parent

In May 1993, Earl Landry Jr. and his wife, Lucie Landry, applied to the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) to be approved as a provisional foster home for C-54. Being a provisional foster home means that the applicant is interested in taking only a particular child and not other foster children. Due to the inadequacies of record keeping and coordination related to previous reports regarding Earl Landry Jr., discussed in this chapter and Chapter 6, on the Cornwall Community Police Service (CPS), the records at the CAS of SD&G did not disclose past allegations that could have disqualified the Landrys as foster parents.

When the application was made in respect to C-54, he had already been in contact with the CAS. In 1991, he had come to the attention of the CAS of SD&G as a victim of sexual abuse by a male relative and had participated in a family sexual abuse treatment program. However, Bill Carriere, who was at that time a supervisor in the Protection Department, indicated that the CAS did not know that C-54 had been abused by Earl Landry Jr. at the time of the foster home application. This was discovered only much later. At the time of the foster home application, C-54 was sixteen years of age and living in a group home.

References must be provided by individuals applying to be foster parents. In this case, a reference was given by Earl Landry Sr., the father of Earl Landry Jr., who identified himself as the retired chief of police in Cornwall. The father's reference letter stated that his son had coached high school sports. Although he knew of the 1985 allegations made against his son, the father provided a reference without caveat. This is further discussed in Chapter 6, on the institutional response of the Cornwall Police Service. Ian MacLean, who was the director of Residential Services at the CAS of SD&G for seven years prior to his retirement, indicated that references supplied by family members are still accepted by the CAS.

On September 13, 1993, the CAS received a call from Cornwall psychologist Dr. Wayne Nadler, who indicated that one of his counselling clients had disclosed sexual abuse perpetrated by Earl Landry Jr. when his client was a child. This patient did not want to pursue the matter with the CAS or police.

On September 20, 1993, the CAS sent a letter approving the Landry home as a provisional foster home for C-54. Executive director Richard Abell also sent a letter to the Landry family. He testified that, if he had known of the call received from Dr. Nadler, he would not have approved the placement.

Follow-up Regarding the Report by Dr. Nadler

On September 14, 1993, Bill Carriere and his staff met to discuss a plan of action with respect to the report of abuse from Dr. Nadler. Mr. Carriere testified that the application by the Landrys to become provisional foster parents was not brought to his attention at that time. However, his colleague Françoise Lepage had become aware that Earl Landry Jr. was noted in a foster home application at the CAS, and she appeared to be looking into whether the alleged perpetrator in the doctor's report and the foster home applicant were the same person. On October 4, 1993, Dr. Nadler provided additional identifying information: the alleged perpetrator of abuse was the son of the former chief of police. CAS staff responsible for C-54 and the provisional foster home were given a copy of Dr. Nadler's report, and more information was requested from him. At this point, there was still no connection made by CAS staff between the 1993 report and the previous allegations that had surfaced in 1985. It is clear, however, that the information relayed by Dr. Nadler identified Earl Landry Jr., who had recently become a foster father, as an alleged child abuser.

In discussing the situation, the CAS staff assessed the risk to C-54 as low, despite his previous history of abuse by an unidentified male family member. As well, his age appeared to be a factor, in that he could not be compelled to leave his place of residence after he was sixteen. Pina DeBellis was assigned to investigate the sexual abuse allegation reported by Dr. Nadler.

Joint Investigation With CPS Does Not Proceed

Ms DeBellis contacted Staff Sergeant Luc Brunet on October 22, 1993. He was the CAS liaison at the Cornwall Police. Staff Sergeant Brunet did some research and indicated that there was no criminal record for Earl Landry Jr. but there was a reported incident of sexual assault in 1985. Several days later, Ms DeBellis spoke to Sergeant Ron Lefebvre, who provided her some details regarding this earlier allegation. Sergeant Lefebvre told her there had been identification problems and that they had not proceeded with charges at that time. The Cornwall Police Service investigation into Earl Landry Jr. in 1985 is discussed in detail in Chapter 6; it was an inadequate investigation almost from its inception.

The CAS investigated the 1993 allegation against Earl Landry Jr. on its own, because the police would not proceed without knowing the identity of Dr. Nadler's client.

In the course of her investigation, Ms DeBellis spoke to C-51, a person identified to her by Sergeant Lefebvre as one of the individuals who had made an allegation in 1985. Although C-51 could not give the name of his abuser, he was able to give significant identifying information about the individual who sexually assaulted him when he was nine or ten, including the fact that the abuser was still working as a city employee.

On October 27, 1993, Ms DeBellis met with C-54 and Lucie Landry and told them that the agency had received a report from an individual who alleged having been abused by Earl Landry Jr. They were advised that the complaint was being investigated and that the CAS believed the allegations were serious and credible. They were not given any information about the complaints from 1985.

Mr. Landry Jr.'s Employer Is Not Contacted

Earl Landry Jr. was working at a local arena, where he could have contact with children, and thus a decision was made at an October 29, 1993, meeting to contact the head of the Parks and Recreation Department of the City of Cornwall. Decisions to contact employers were always made on a case-by-case basis and were subject to senior level authority at the CAS. An attempt was made to contact the head of the Parks and Recreation department, at Earl Landry Jr.'s place of employment, but he had left for the day. The employer was otherwise never contacted or informed in this case. In another case, involving complaints against an individual named Bernie Campbell, who was a volunteer coach, the CAS did disclose the allegations to the Parks and Recreation Department, which led to other victims being identified. In testimony before me, Bill Carriere agreed that the same approach should have been followed in the case of Earl Landry Jr., and his employer should have been informed.

Continued Attempts to Identify the Name of the Alleged Abuser

In November 1993, Ms DeBellis continued to work with C-51 in the hopes that he would provide the CAS the name of his alleged abuser. Bill Carriere testified that, for some reason, the CAS "became fixated" on the name. He said that, at the time, it was thought that finding the name of the alleged abuser was the appropriate thing to do. The CAS continued to assess the risk associated with Earl Landry Jr. as low.

In November 1993, consideration was given to removing C-54 from the Landry home. Earl Landry Jr. had moved out for a period but Ms Landry was

having difficulty caring for the Landry's young son, who was in a full-body cast, and needed her husband to help her. In addition, C-54 indicated that he wanted to stay in the home, and he denied any abuse by Earl Landry Jr. While the CAS had concerns, it did not intervene to remove C-54, and Earl Landry Jr. returned to the family home.

In a meeting held on December 21, 1993, the CAS concluded that there was sufficient information to infer that Earl Landry Jr. had probably molested C-51 and Dr. Nadler's client. This position was confirmed at a January 11, 1994, meeting. However, the CAS did not inform Earl Landry Jr.'s employer or contact the police, nor did it take steps to record his name in the Child Abuse Register. In addition, although CAS staff told C-54 that they preferred he move out from the Landry home, they took no further steps, as C-54 was sixteen and did not want to move. The Landry family was told on January 20, 1994, that the status of their home as a provisional foster home was terminated. This angered the family and had financial consequences for them, as foster parents are paid.

Another Allegation Is Made Against Earl Landry Jr. in 1995

In December 1995, CAS of SD&G worker Carole Leblanc received an allegation by C-52 that he had been abused by Earl Landry Jr. at King George Park when C-52 was twelve to sixteen years of age. Ms Leblanc indicated that she was not aware of the 1993 or 1985 allegations about Earl Landry Jr. She provided the information she had collected to the Cornwall Police Service. Ms Leblanc had no further contact with the police until February 1997, when Sergeant Brian Snyder of the CPS contacted her to prepare a will-state statement.

At a May 1996 risk management meeting, the issue of informing the Parks and Recreation Department about Earl Landry Jr. surfaced once again. A decision was made that the CAS was on "shaky ground" with respect to informing the employer, notwithstanding the third allegation and the fact that a determination had been made that Earl Landry Jr. had likely abused C-51 and another individual. In April 1997, the issue of informing the employer remained under consideration but again no action was taken. By this time, CAS worker Carole Leblanc had been asked by the CPS to prepare a will-state in respect to the complaint of C-52, which would suggest a serious investigation was proceeding.

Executive director Richard Abell indicated in a forthright way that, in failing to inform Earl Landry Jr.'s employer that he posed a risk to children, the CAS "dropped the ball." I agree that, on this issue, the CAS failed to take appropriate action. There was sufficient information to warrant informing the employer, who could then have taken its own steps and actions. A useful analogy is what occurs in the school system. If an allegation of abuse is made against a teacher, the teacher is removed from teaching duties while the complaint is reviewed. When an

employer is informed of the allegation, it can take steps such as assigning the individual to duties that do not involve children or suspending the employee with pay while the situation is investigated. Informing an employer about allegations of abuse against an employee is a serious matter, and there should be a credible allegation before proceeding. In this case, there was ample information to indicate that there was a risk to be managed.

I accept the testimony of Richard Abell and Bill Carriere that they were not influenced by the fact that the individual they were investigating was the son of the former chief of police. However, I am troubled by the reality that there was so much concern about the sensitivity of reporting to an employer and insufficient sensitivity to the risk to children represented by a man who had ongoing access to children in his workplace.

C-54 Discloses Abuse by Earl Landry Jr.

Throughout the CAS investigation in 1993, C-54 denied being abused by Earl Landry Jr. However, in August 1997, he disclosed to the CPS that Earl Landry Jr. had abused him. The CAS of SD&G was made aware of this disclosure on August 5, 1997. Earl Landry Jr. later admitted that he had abused the boy when C-54 was a preteen and also when he was residing with the Landrys as a foster child. Earl Landry Jr. was charged by the CPS in 1997 and in August 1999 pleaded guilty to charges relating to five complainants, including C-54. He was sentenced to five years imprisonment.

Once Earl Landry Jr. was charged, Greg Bell, a worker with the CAS of SD&G, was asked to assess any possible risk associated with the Landry's own three children. By this time, the Landry family had moved to the Ottawa area, and so Mr. Bell was assisting the Ottawa CAS. Greg Bell testified that he did not see information about a prior complaint regarding Earl Landry Jr. in the files of the CAS of SD&G.

Poor Cross-Referencing and Record Keeping Create Unacceptable Risk

The issue of poor or non-existent cross-referencing in CAS files is a consistent theme in the Landry case. The foster home staff approved placements at the same time when a credible report of abuse had been made. In addition, there appeared to be poor record keeping with respect to the 1985 and 1993 complaints. Executive director Richard Abell indicated in his testimony that, in general, CAS record keeping was good and that this case was a "blip." I am not so sure. It seems that, even when the CAS had the opportunity to correct its records in 1995, this was not done. In 1997, CAS worker Greg Bell could not find documentation of complaints made about Earl Landry Jr. prior to the charges related

to C-54. I believe that a review of the records-management system of the CAS is necessary to ensure that the system is sound and that indeed the pervasive record-keeping problems in this case were only anomalies.

The fact that records were incomplete is not a trivial matter. It led to the approval of an inappropriate foster home placement and delays in reporting to the employer of the potential risk associated with an employee with access to children. While I do not attribute the inadequacies of the Landry investigation at the CPS to the CAS, if the CAS had had better records, it might have been of greater assistance to the CPS or have been in a position to put pressure on the Cornwall police during its very slow investigation.

Project Blue

The genesis of Project Blue emanated from a discussion in late September 1993 between Richard Abell, executive director of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G), and Constable Perry Dunlop in the parking lot at Quinn's Inn in St. Andrew's.

On September 25, 1993, Perry Dunlop, who was a musician as well as a Constable with the Cornwall Community Police Service (CPS) was scheduled to perform at the pub at Quinn's Inn. Richard Abell and his wife were good friends of the Dunlop family and went to see Constable Dunlop perform that evening. As Constable Dunlop was unloading his equipment in the parking lot, he decided to approach Richard Abell and share some information with him that was a source of anxiety.

Constable Dunlop told Mr. Abell that he had overheard a conversation between some officers at the police station in which Father Charles MacDonald was mentioned. Constable Dunlop spoke to the officer involved in the investigation of the sexual assault allegations involving Father MacDonald and obtained a copy of the victim's statement. Perry had looked for the file on this matter, but had not been successful: "Nothing [was] put on internal record system, computers."

Perry Dunlop was very upset that a police investigation involving sexual abuse of a young person by a priest was not being pursued by the CPS. The Constable thought that the investigation had not been properly handled. He was worried that children in the community continued to be at risk of abuse. He considered himself under a statutory duty to report this information to the Children's Aid Society. Constable Dunlop told Richard Abell that he had a copy of the victim's statement. Mr. Abell testified that he thought that Constable Dunlop had disclosed the name of the priest that evening, identifying Father Charles MacDonald, an active priest in St. Andrew's Parish, as the alleged

perpetrator. This parish was in fact across the street from Quinn's Inn, where the Abells and Dunlops were having this discussion. Perry and Helen Dunlop had been married by Father MacDonald, and the priest had baptized their children. As Mr. Abell commented in his evidence, Constable Dunlop knew the priest very well: "[T]his was very close to home for Perry, extremely close to home, and he was rocked by it."

The following day, Helen and Perry Dunlop came to the Abell home to further discuss their concerns about the CPS investigation. It was on that day, September 26, 1993, that Perry Dunlop showed Richard Abell the statement of David Silmsen concerning his allegations of sexual assault. In this statement, Mr. Silmsen made allegations of sexual abuse against not only Father Charles MacDonald but also Ken Seguin, a probation officer in Cornwall. Mr. Abell understood that these were allegations of historical abuse. Constable Dunlop told the CAS executive director that, although some of his fellow officers supported his view and agreed that the investigation should be pursued, he felt he was "stuck" in terms of persuading his police force to pursue the criminal allegations against the priest. Inscribed in Richard Abell's notes is the comment, "[A] couple of sergeants ... are with him on this but otherwise he is stuck." Mr. Abell assured Constable Dunlop that he would pursue the matter within his own organization. Mr. Abell did not take the victim's statement from Perry Dunlop at the time but he read it and found it to be very credible. Inscribed in his notes were the comments "very credible—looks to be consistent with SVA (statement validity analysis) criteria" and "I tell Perry I'm duty bound to act on the information."

Constable Dunlop told Mr. Abell that he wished to discuss the case further with officers in his force with the objective of convincing them to pursue the Father MacDonald matter. In particular, he wanted to speak with Staff Sergeant Luc Brunet, who, he explained, was the head of the Criminal Investigation Branch (CIB) and Constable Heidi Sebalj's supervisor. Constable Sebalj was the CPS officer who investigated the allegations made by David Silmsen. If he was not successful, Constable Dunlop planned to give a copy of the victim's statement to Mr. Abell. Richard Abell had a clear recollection of this discussion with Constable Dunlop on the afternoon of September 26, 1993, at the Abell home:

... I recall this clearly from that meeting, he was very aware of the situation he was putting himself in with his own force in coming to me, talking to me the way he had and being prepared to give me the statement. He knew that there were going to be consequences to that. He wanted to make one more effort, as he saw it, to try to move things ahead within his own organization.

After a few days, Richard Abell decided to contact Constable Dunlop to find out the outcome of his discussions with Staff Sergeant Brunet and members of his force. Mr. Abell called the Dunlop home on September 29, 1993, and spoke with Helen, who was upset. Richard Abell decided to go to the Dunlop home.

Helen Dunlop related to the CAS executive director that her husband's discussions with Staff Sergeant Brunet had not gone well. Constable Dunlop had been advised to end his involvement in the Father MacDonald matter and was cautioned that he could be charged under the *Police Services Act*. Constable Dunlop, she said, had also spoken to the Crown prosecutor, Murray MacDonald. Ms Dunlop told the CAS executive director that she herself had contacted David Silmsers and had tried to arrange to meet with him. Mr. Silmsers subsequently told officers at the CPS about this contact. Mr. Abell was surprised that Ms Dunlop had involved herself in this matter by contacting an alleged victim of sexual abuse.

Perry Dunlop called Mr. Abell that evening and reiterated the information conveyed by his wife. The CPS Constable made it clear that he had not been successful in persuading his force to pursue the criminal investigation involving the priest. Mr. Abell picked up the victim's statement at the Dunlop home the following morning and assured the CPS Constable that he would discuss the matter with senior staff at the CAS and decide whether the CAS would proceed with an investigation. Constable Dunlop told Mr Abell that he had very limited support at the CPS and that there could be charges under the *Police Services Act* as a result of his actions. Both Perry Dunlop and Richard Abell believed that Constable Dunlop was under a statutory duty under the *Child and Family Services Act* to report these allegations of child abuse. Constable Dunlop knew that by giving Mr. Silmsers's statement to Richard Abell, he was placing himself in even greater professional jeopardy. As Mr. Abell said in his evidence, "it was clear that the risk to him had gone up" but "he [Constable Dunlop] was absolutely determined to follow through" with it.

In Mr. Abell's view, the circumstances presented in the Silmsers case, past abuse by a priest who continued to be active in the church and the community, required a report to the Children's Aid Society by officers at the Cornwall Police Service. The CAS executive director believed that the failure of the investigating police officer and his superior to report the matter to the CAS was attributable to the lack of clarity surrounding cases of historical abuse. Mr. Abell, in fact, acknowledged in his testimony that the "lack of clarity may well have extended to our own organization."

I agree with Mr. Abell and I am of the view that the statutory duty in section 72 of the *Child and Family Services Act* should be amended. It should clarify

that there is an obligation to report cases of historical child abuse in circumstances in which the alleged perpetrator continues to be a risk to children.

When the Silmser allegations were brought to his attention, Mr. Abell raised with Chief Claude Shaver that the development of a protocol was necessary in order to clarify the reporting obligations and to delineate the procedures for historical cases of child abuse. Mr. Abell agreed that it would be beneficial to generate a formal document to ensure that all police officers were cognizant of the statutory duties and the procedures to be followed for cases of historical child abuse. I note that the 2001 Eastern Zone Child Protection Protocol provides that, when there is an allegation of sexual abuse and where the accused is in charge of a child or is in a position of trust, there should be reciprocal reporting and joint investigations involving the CAS and the police. There is also a list of factors to be considered to determine if the CAS should be involved despite the fact that the accused is not in charge of a child or in a position of trust. In my view, the definition of sexual abuse should be broadened so it is clear that it also includes instances involving historical sexual abuse. The protocol should also be reviewed and updated. Furthermore, it is unclear to me whether there is a mechanism in place to ensure that everyone from the different signatory institutions is familiar with the applicability and operation of the protocol.

Mr. Abell gave a copy of David Silmser's statement to CAS senior managers Bill Carriere, Angelo Towndale, and in-house legal counsel at the CAS, Elizabeth MacLennan. Mr. Towndale confirmed that, when he read the Silmser statement, his immediate reaction was that the Children's Aid Society should investigate the allegations. The primary reason for this conclusion was that other children were possibly at risk of abuse by the priest.

Prior to meeting with the senior managers, Richard Abell called his sister, Susan Abell, who had been the executive director of two Children's Aid Societies. She had been the executive director of the Children's Aid Society in Kingston at the time of the St. George allegations, a church-related multi-victim situation that had some parallels to the matter confronting Mr. Abell in the Cornwall area. Susan Abell had experience with the media and information disseminated to the public, and Mr. Abell sought to draw upon her knowledge.

Mr. Abell met with his senior managers on September 30, 1993. Richard Abell, Mr. Carriere, Mr. Towndale, and Ms MacLennan all agreed that the statement was "highly" credible, that "very likely ... there was other abuse of Silmser not mentioned in the statement, likely other victims," and that there was a "*good possibility of present abuse of children by Charlie MacDonald.*" Inscribed in Mr. Abell's notes of the September 30, 1993, meeting was the comment "Strong consensus we have duty to open investigation based on concern for present abuse of children." This consensus resulted in the CAS Project Blue.

During this meeting, Mr. Abell and his senior managers discussed how to proceed with Project Blue. They discussed the composition of the team, which would consist of highly qualified CAS staff, female and male. The executive director also decided that he would first approach Chief Shaver of the Cornwall Police Service as a professional courtesy. The chief of the CPS would be asked if the force wished to re-open the criminal investigation, and, if so, whether the police force was interested in conducting a joint investigation with the CAS. If not, the CAS would proceed with its own investigation of the allegations against the priest. Mr. Abell also intended to contact the Ontario Provincial Police (OPP) in Long Sault, as this was the area of the parish in which Father Charles MacDonald was then assigned. Mr. Abell also planned to notify the Ministry of Community and Social Services because of the potential for this investigation to become high profile and because of the allegations against Ken Seguin.

The CAS Meets With the Chief of Police

As discussed in Chapter 6, on the institutional response of the Cornwall Police Service, Richard Abell met with Chief Shaver on October 1, 1993. The executive director of the CAS testified that he had initiated the meeting, which was held in the CAS office. Mr. Abell asked Angelo Towndale to attend the meeting with the police chief. Mr. Towndale, a Roman Catholic, was active in the local Catholic Diocese and was also a member of the Cornwall Police Services Board.

It was at this meeting with the CAS that Chief Shaver learned that Constable Perry Dunlop had given Mr. Silmsner's statement to the Children's Aid Society. Chief Shaver was visibly angry that the CPS Constable had done this. According to Mr. Abell's notes of the meeting, Chief Shaver said that he had "a big issue to deal with re Perry Dunlop going outside channels."

At the meeting, Mr. Abell reviewed the reporting section of the *Child and Family Services Act* with the police chief and told him there was a statutory duty to report this alleged abuse to the Children's Aid Society. The executive director of the CAS also told Chief Shaver that the victim's statement was "highly" credible, and that Mr. Abell intended to proceed with the investigation.

Chief Shaver told Mr. Abell that he was "upset" when he learned about the financial settlement of the Diocese with David Silmsner and that he would have wanted the criminal investigation of the priest to have proceeded. The police chief explained that he had conferred with the Crown, who had indicated that, if the complaint were withdrawn, there was no basis to proceed. The chief admitted that his police force had "screwed up big time," that the investigation had not been done, and that it had been placed on the "back burner." Mr. Abell considered these comments "striking" at the time and had a clear recollection of

this acknowledgment by the police chief. Chief Shaver acknowledged that the investigating officer, Heidi Sebalj, was inexperienced and that Staff Sergeant Brunet had not supervised her adequately. This criticism of the police officers also surprised Mr. Abell. As the executive director of the CAS said in his evidence, “[Y]ou’ve got to be candid with professional colleagues, but to take criticisms of your own people outside your shop is, I guess—in my view, senior people don’t typically do that.”

This meeting is also discussed in Chapter 6, on the institutional response of the Cornwall Police Service, where I note that Chief Shaver did not agree with all of Mr. Abell’s recollections of the meeting. Where there are differences, I prefer the evidence of Mr. Abell, whose evidence was forthright and consistent with his thorough, legible, contemporaneous notes.

Mr. Abell confirmed that the CAS would be proceeding with an investigation and that he planned to assign two of his “top” staff to investigate these allegations of abuse. Chief Shaver questioned the authority of the CAS to investigate on the basis of “out of channel” information, namely the Silmsers statement provided by Constable Dunlop. Mr. Abell replied that there was authority under the statute to proceed with the investigation.

Chief Shaver indicated that David Silmsers was a man of questionable character and motive. Mr. Abell pointed out that, if Mr. Silmsers had difficulties in his adult years, this was consistent with the profile of a victim of abuse. The police chief voiced further criticism by adding that four people had been contacted—three denied anything had occurred, and one person refused to talk. A \$25,000 payment had been made to Mr. Silmsers from the Bishop’s office, and, in the chief’s view, his police force had been “used” by David Silmsers to obtain this payment.

Mr. Abell reiterated that the CAS had the authority on the basis of current risk to children to pursue the matter, as the David Silmsers’s statement alleged that two individuals in positions of authority and control had abused children.

Chief Shaver asked for some time to review the police file on the Silmsers complaint, which was being assembled, and to confer with Sean Adams, Mr. Silmsers’s lawyer. Mr. Abell agreed to a delay of one week and told the police chief that, after that time, the CAS would proceed with its own investigation.

Mr. Abell met Chief Shaver again one week later with Angelo Towndale. This time, Staff Sergeant Brunet accompanied Chief Shaver to the meeting with the CAS. As I discuss in Chapter 6, on the institutional response of the CPS, at this meeting Claude Shaver reported on the visit he had with the Pope’s representative in Ottawa on October 7, 1993, and a subsequent meeting with Bishop Eugène LaRocque.

Chief Shaver reported that the Bishop intended to move Father MacDonald out of the parish and send him for an assessment at a facility in Barrie, Ontario.

The police chief told Mr. Abell that the Bishop had related to him that Father MacDonald had paid \$10,000 of his own money, the Bishop had paid \$10,000 on behalf of the Diocese, and “someone else put in \$10,000 or \$12,000” for the financial settlement with Mr. Silmsner. In other words, the payment to David Silmsner was from three sources: Father MacDonald, the Diocese, and a third unnamed party. Although Mr. Abell knew that David Silmsner had made allegations of abuse against Ken Seguin, he could not recall whether he asked Chief Shaver for the identity of the unnamed third party at the October 8, 1993, meeting. The Bishop told the police chief that he opposed the payment to Mr. Silmsner but relented because of the advice received by lawyers Jacques Leduc and Malcolm MacDonald.

Chief Shaver told Mr. Abell that “police hands were still tied with respect to [Father] MacDonald” in that Mr. Silmsner had withdrawn the complaint. The chief stated that the CPS was waiting for a response from Sean Adams, Mr. Silmsner’s lawyer, regarding his client’s refusal to proceed.

Mr. Abell told the police chief that the CAS intended to meet with the Bishop. There was agreement that current altar boys at St. Andrew’s Parish needed to be contacted. Mr. Abell discussed with Chief Shaver the need to develop a joint CAS–police–Church protocol to deal with allegations of sexual abuse by clergy. At that time, there was only a CAS–police protocol. Mr. Abell testified that the Diocese had done its own investigation in late 1992 and early 1993, but it had not shared information with or reported the allegations of abuse to the CAS.

Mr. Abell asked what the CPS was doing with regard to Ken Seguin. Chief Shaver replied that he was waiting to hear from the Crown prosecutor. Staff Sergeant Brunet undertook to keep Mr. Abell informed of the outcome of this discussion.

The CAS Meets With Bishop LaRocque

The CAS met with Bishop LaRocque on October 12, 1993. Mr. Carriere and Mr. Towndale accompanied Mr. Abell to the meeting. At this point, Richard Abell had decided that Mr. Carriere would be responsible for the investigation by the CAS. Although the Bishop did not take any notes of that meeting, Mr. Abell took detailed contemporaneous notes.

Mr. Abell started the meeting with a discussion of the role of the CAS and explained that the agency was concerned with current and recent abuse of children. He told the Bishop that the agency was investigating allegations of abuse by Father Charles MacDonald. Recorded in Mr. Abell’s notes of the meeting was that the Bishop was “taken aback” that the CAS would investigate this matter. Bishop LaRocque said he wished to “monitor” the investigation. Mr. Abell made it clear that the CAS intended to conduct a full investigation without any monitoring

by the Church. The Bishop expressed concern for the publicity as well as the reputation of Father MacDonald. He said that Cornwall was a small community and that once the altar boys and their families were interviewed, the priest would be considered an "accused" person. Mr. Abell's response was that the best way to deal with the accusations was to conduct an open and thorough investigation to learn the facts.

The Bishop told the CAS officials that Father MacDonald was at the South-down facility in Barrie. Mr. Abell indicated that he wanted Father MacDonald out of the parish to enable the CAS to freely conduct its investigation. Mr. Abell testified that the primary reason to ensure that the priest was not in the parish was the concern about the safety of children. The Bishop was "very reluctant" to comply with this request, according to the notes of the meeting. They engaged in a "lively exchange" and finally agreed that Father MacDonald would stay away from the parish for a two-week period. The CAS officials knew this was not sufficient time to enable it to complete its investigation. As Mr. Abell said in his evidence:

It wasn't going to be enough; we certainly knew that. I mean, he held his ground on this for a while. We really had to bat this one around for a while. He really wanted to bring Father MacDonald back relatively quickly. And, again, it had to do with the rumour mill getting started and, you know, the public image of him as an accused. So that was his position.

In the mind of the CAS officials, two weeks was merely a "start point." The Bishop mentioned that David Silmsner had contacted a cleric in Ottawa who handled abuse allegations for that Diocese. The Church official had sent a letter to Bishop LaRocque, which the CAS officials asked to read. Although the Bishop allowed Mr. Abell and his senior managers to review the correspondence, he refused to give the CAS a copy of the document on the grounds that it was "confidential." The letter was from Monsignor Peter Schonenbach and was dated December 11, 1992. Mr. Abell noted that the Church official from Ottawa had ended his correspondence with his assessment that David Silmsner was credible.

Bishop LaRocque told the CAS officials that he had been opposed to paying off David Silmsner but had been persuaded to do so by the Diocese lawyer, Jacques Leduc, and Father Charles MacDonald's lawyer, Malcolm MacDonald. This was despite the fact that the Bishop said he had recently attended meetings at the Canadian Conference of Catholic Bishops and had been advised not to enter a settlement with the alleged victim. Mr. Abell knew Mr. Leduc, as he had previously acted as legal counsel for the CAS on a few matters. Mr. Abell's notes indicate

that the Bishop referred to the payment to Mr. Silmsen as a “nuisance settlement.” Bishop LaRocque made negative comments about Mr. Silmsen’s character and commented that he had been “in and out of jail.”

The Bishop told the CAS that Father MacDonald had strongly denied the Mr. Silmsen’s allegations of sexual abuse. Bishop LaRocque stated that Father MacDonald had admitted that he was homosexual and that he had engaged in sexual relations in the past. However, he claimed that his partners had all been teens and adults and that they had sometimes initiated the encounters. Mr. Abell found these comments “pretty striking.” The CAS officials immediately responded with “a very clear message” to the Bishop that a priest was in a position of trust and authority. Mr. Abell said the following in his evidence:

... I’m struck with the notation there “We jumped on it.” I mean, we did, and not [in] an impolite way but—not in an impolite way but we wanted him to know that if we were being presented a rationale that, “I only did it with teens,” [it] wasn’t going to—wasn’t, frankly, going to wash with us. I mean, that’s why we had a—we gave him a very clear message about people in roles of trust and responsibility and that we were going to proceed.

...

... [I]t frankly smacked of a rationale and it’s a rationale that we’ve heard in our business all too often, you know, including [regarding] small children—you know, they enticed me and she cuddled up to me, and you know, we’ve—it’s not at all uncommon to hear victimizers victimize those children in that way.

So just because of our professional orientation and background it’s just something we couldn’t let go, and we didn’t. That’s where the conversation went.

Bishop LaRocque said Father MacDonald had not engaged in sexual relations while he was teaching, nor for the past four years. This was when that the CAS executive director learned that Charles MacDonald had formerly been a teacher.

The CAS officials discussed with the Bishop the need for a protocol with the Church. Bishop LaRocque was receptive and agreed that the police and the CAS should work on developing a protocol for allegations of abuse.

Mr. Abell told the Bishop that Bill Carriere would be responsible for the CAS investigation of David Silmsen’s allegations. The Bishop said Monsignor Donald McDougald would handle the Father MacDonald case for the Diocese of Alexandria-Cornwall. The Bishop agreed to provide names of altar boys to the

CAS. A discussion ensued about whether contact should be made with former altar boys or those in other parishes where Father MacDonald had worked. The CAS agreed to begin its investigation with the current altar boys. Mr. Abell asked the Bishop to give Jacques Leduc permission to speak freely and openly to the CAS about the Silmser case. He also mentioned that the CAS would contact the OPP and advised the Bishop that keeping the priest away from the parish for merely two weeks may not be a sufficient period of time for the CAS to complete its investigation. According to Mr. Abell's notes of the October 12, 1993, meeting, when the meeting came to an end, the "Bishop looked worried." As Mr. Abell said in his evidence, the Bishop said:

... he had a mess on his hands. I mean, he did have a mess on his hands
... [H]e was also open with us that he had a role in creating it in terms of
the decision-making he made.

Staff Sergeant Garry Derochie came to the CAS to meet with Mr. Abell on October 14, 1993. As discussed in Chapter 6, on the institutional response of the Cornwall Police Service, Staff Sergeant Derochie explained to Mr. Abell that the CPS was investigating Constable Dunlop, who could be subjected to charges under the *Police Services Act* for providing the Silmser statement to the CAS. Mr. Abell immediately disclosed that he was friends with Perry and Helen Dunlop. In this meeting, Staff Sergeant Derochie was critical of the CPS investigation of the Silmser complaint and stated that, in his opinion, it had been poorly handled by the CPS.

Staff Sergeant Derochie said that, if the CPS had "made mistakes," it "should do damage control—get busy and do a proper investigation." He also mentioned that the Crown lawyer had a conflict of interest. The police officer encouraged the CAS to examine the allegations of abuse made against Mr. Ken Seguin and added that there had been "stories" about this probation officer for some time.

Staff Sergeant Derochie said that he would be recommending that no charges be laid against Perry Dunlop and commented that an "officer's highest duty is to the safety of the community."

The Initiation of Project Blue: October 14, 1993

On October 14, 1993, Project Blue was initiated by the Children's Aid Society. Project Blue was named after the Blue Jay baseball team, which was playing in the World Series at that time. The primary purpose of the project was to determine whether Father Charles MacDonald posed a present risk of abuse to children in the Cornwall area. According to the provincial guidelines, "the society will

initiate a further investigation only if there is an allegation or evidence that a child under the age of sixteen may be at risk.” Mr. Abell testified that although, based on Mr. Silmsen’s statement, the CAS had concern and suspicions that altar servers were at risk, there was no “specificity” regarding a particular child. Bill Carriere was assigned the responsibility for the investigation. Greg Bell was the lead investigator, assisted by Pina DeBellis. CAS lawyer Elizabeth MacLennan was also part of the Project Blue team. Beginning on October 14, 1993, Mr. Bell worked full-time on the Project Blue investigation for ten weeks, after which time he returned to his caseload. Team meetings were held each week, chaired by Mr. Abell, who was also the principal note-taker.

Mr. Carriere discussed with Mr. Bell the components of the CAS investigation. It involved making contact with several institutions, including the OPP, to advise the police force of the Project Blue investigation of Father Charles MacDonald. The CAS also wanted the Cornwall Police Service to provide the agency with all pertinent information on Father MacDonald, probation officer Ken Seguin, and David Silmsen and other possible victims. The agency also planned to ask the Diocese of Alexandria-Cornwall for information on Father MacDonald’s contact and relationship with Mr. Silmsen and any other potential victims. In addition, the CAS intended to contact the Ottawa Diocese and to speak to Monsignor Schonenbach.

Other components of the Project Blue investigation included interviews with David Silmsen and other possible victims of abuse who were identified. The CAS also had plans to interview the alleged perpetrator, Father MacDonald, and possibly Mr. Seguin.

On October 14, 1993, Mr. Abell briefed Lenore Jones, program supervisor at the Ministry of Community and Social Services. She agreed to find out whether probation and parole officer Ken Seguin was in the Ministry. At that time, probation officers for young offenders were in the Ministry of Community and Social Services and not the Ministry of Correctional Services. If Mr. Seguin were with Correctional Services, this meant that he was dealing with clients who were sixteen and seventeen years old. However, if he were with Community and Social Services, he would be coming into contact with children under the age of sixteen.

Mr. Abell subsequently learned that Mr. Seguin was not in fact with the Ministry of Community and Social Services. Mr. Abell denied at the hearings that he had told Staff Sergeant Derochie that the CAS was not investigating Mr. Seguin because the probation officer was not employed by his Ministry. I accept the explanation of Mr. Abell that he was trying to determine which ministry Ken Seguin worked for in order to determine the age of his clients. However, in my opinion more should have been done to determine whether Mr. Seguin was in contact with young persons, regardless of which Ministry he worked in.

On October 14, 1993, Monsignor McDougald brought to the CAS office the names of current altar boys at St. Andrew's Church. He gave these names to Mr. Towndale.

In mid-October 1993, Mr. Carriere and Mr. Bell met with Detective Constable Ron Wilson of the Ontario Provincial Police, Long Sault Detachment. The OPP officer stated that his force would not be conducting an investigation without a willing named complainant. Detective Constable Wilson agreed to conduct a Canadian Police Information Centre (CPIC) check on Father Charles MacDonald and to consult with members of his force to determine what assistance, if any, the OPP could provide to the CAS. Detective Constable Wilson, after reading David Silmser's statement, expressed concern about the credibility of this alleged victim. Mr. Carriere pointed out to the OPP officer the areas of credibility in Mr. Silmser's statement regarding the allegations of abuse against Father Charles MacDonald.

CAS Receives a Call From Jacques Leduc

Jacques Leduc, who represented the Diocese in the financial settlement with David Silmser, contacted Richard Abell on October 15, 1993. The lawyer asked Mr. Abell if Father Charles MacDonald had made an admission with respect to the allegations of abuse. Mr. Abell replied that he had learned from a meeting with Bishop LaRocque that the priest had admitted that he was gay and had engaged in sexual relations with adults and adolescents, but not for the past four years. The priest, according to Bishop LaRocque, had denied that he participated in sexual acts when he was a teacher. Mr. Abell's notes of the October 15 call with Mr. Leduc state: "I say 'yes' to being homosexual—relations with adolescents, adults. Not as a teacher, not the last 4 years. (This from the bishop)."

Mr. Leduc told Mr. Abell that "priestly confidences" could not be "betrayed." It appeared that Mr. Leduc was extending the confessor–penitent privilege to priestly confidences. It is curious that Mr. Leduc offered this opinion to Mr. Abell. I comment in Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall, that the penitent–confessor privilege is not recognized in this province.

Mr. Bell and Mr. Leduc also spoke on October 15, 1993. Mr. Leduc made it clear to Mr. Bell, and later to CAS legal counsel Elizabeth MacLennan, that he intended to fully cooperate with the CAS investigation. Inscribed in Ms MacLennan's notes is the comment that "[h]e wanted to know if CAS was on a witch hunt or was there something to it. I said we felt there is definitely something to the allegation." Mr. Leduc also told Mr. Bell a few days later that he would try to encourage David Silmser to talk to the CAS.

Mr. Leduc met with Mr. Carriere, Mr. Bell, and Ms MacLennan on October 22, 1993. He gave the CAS the letter from Monsignor Schonenbach as well as other pertinent documents. Mr. Leduc indicated that Father MacDonald was receiving treatment at a facility for stress. He confirmed that the Diocese had not had contact with the Cornwall Police Service regarding the Silmsers' allegations of abuse.

At the second team meeting held by Mr. Abell, on October 29, 1993, the CAS executive director learned that the Bishop had made a commitment through his lawyer, Jacques Leduc, to give the CAS the necessary time to investigate the allegations. Mr. Abell, as I mentioned, was initially told that the CAS had only two weeks. He was now informed that Father MacDonald was not returning to his parish.

Mr. Bell stated that he was trying to arrange an interview with David Silmsers but that Mr. Silmsers was reluctant to speak with the CAS for fear of losing his settlement money. Discussions were taking place with the Diocese to ensure that Mr. Silmsers would not risk forfeiting the settlement money if he discussed the allegations of abuse with the CAS.

The CAS Meets With the Cornwall Police Service

On October 21, 1993, Mr. Carriere and Mr. Bell met with CPS Staff Sergeant Luc Brunet and Constable Heidi Sebalj. The CAS officials were told that the Cornwall Police Service had not investigated the allegations made against Ken Seguin. Mr. Carriere and Mr. Bell were also permitted to examine the statements of some alleged victims of Father MacDonald, but the identity of these individuals were not disclosed to them by the police. As a result, the CAS could not contact them.

Three statements in particular concerned Mr. Carriere. The first involved an individual who had known Father MacDonald, Mr. Carriere believed, from St. Columban's Parish. The priest had offered to drive the then eighteen-year-old home one evening, and he alleged that Father MacDonald had put his hand on his groin and asked him if it felt comfortable. The youth responded, "No," at which time the priest removed his hand. There was no further contact with the alleged victim. The second incident involved the sexual molestation of a youth who had had an overnight stay with Father MacDonald. The third statement that was of concern to Mr. Carriere stated that Father MacDonald showed pornographic magazines to two boys who were eleven or twelve years old. The individuals said that the priest kept the magazines under his bed. This raised two questions for Mr. Carriere:

... One is what they would be doing in Father Charlie's bedroom and why would Father Charlie be showing them pornographic magazines? And if they weren't in Father Charlie's bedroom how would they know that these magazines were kept under the bed? I mean, either they saw them there or they were told that they were kept under the bed, and one almost seems as bad as the other.

On November 4, 1993, Richard Abell had a second meeting with Staff Sergeant Derochie. The CPS officer told Mr. Abell that not only was he reviewing whether Constable Dunlop's disclosure of the Silmsers statement warranted charges under the *Police Services Act*, he was also conducting a review of the CPS investigation of the allegations of abuse by David Silmsers. Staff Sergeant Derochie asked the CAS executive director whether he had become aware of any problems in the earlier police investigation.

Mr. Abell would have wanted the CPS to have alerted the CAS to the Silmsers allegations when the police were investigating the matter. He told Staff Sergeant Derochie that the CAS and CPS needed to discuss the duty to report generally, and the obligation to report historical child abuse in particular. In Mr. Abell's view, it was essential that the two institutions have a common understanding of this issue.

The CAS Meets With David Silmsers

Mr. Carriere believed that the initial approach of the CAS towards David Silmsers required careful thought. In his view, it was important to convey the following to Mr. Silmsers:

1. that his allegations had credibility;
2. that he was playing an important role in helping to protect other children;
3. that there were also other possible victims; and
4. that both Ken Seguin and Father MacDonald were of concern to the CAS.

Mr. Carriere explained in his evidence that "we were coming out of an era where children weren't necessarily believed" and that "it was important to say that in the absence of any other information we should at least accept that what they may be telling has credibility."

Greg Bell called David Silmsers on October 28, 1993. Mr. Silmsers was surprised by the CAS contact and was concerned that the agency knew about his abuse.

Mr. Silmsner wanted to know who had disclosed the abuse to the CAS, but Mr. Bell replied that he could not reveal the identity of that person. Mr. Silmsner told Mr. Bell that he was prevented from discussing the abuse with the CAS because of the financial settlement that he had entered into with the Diocese. Mr. Bell told Mr. Silmsner that, pursuant to the *Child and Family Services Act*, the CAS had the right to pursue these allegations of abuse.

The following day, a team meeting was held, which was attended by Mr. Abell, Mr. Carriere, Mr. Bell, Ms DeBellis, and Ms MacLennan. It was agreed that Jacques Leduc, the lawyer representing the Diocese, should be asked for a copy of the financial settlement between the Church and Mr. Silmsner, as well as the reports from the Southdown facility on Father Charles MacDonald. Unlike the CPS, the CAS immediately found it prudent to attempt to obtain the settlement documents.

Mr. Leduc made it clear in a telephone call with the CAS on October 29, 1993, that the settlement agreement between the Diocese and David Silmsner was confidential and that it would not be provided to the agency. Malcolm MacDonald, Father MacDonald's lawyer, subsequently provided this information to the CAS.

David Silmsner was interviewed by the CAS on November 2, 1993. Mr. Bell and Ms DeBellis were present at the interview, which was audiotaped. The purpose of the meeting was to obtain information from Mr. Silmsner regarding his allegations of abuse and to ascertain the identity of other possible victims.

David Silmsner described the abuse he was subjected to by Father Charles MacDonald and Ken Seguin. David Silmsner told the CAS officials that he was about thirteen or fourteen years old when he was sexually abused by Mr. Seguin. He said that he was sexually abused in Mr. Seguin's home. As Mr. Carriere stated in his testimony, Mr. Seguin, a parole and probation officer, was clearly a person in a position of authority within the meaning of the *Child and Family Services Act*.

To the surprise of CAS officials, Mr. Silmsner also alleged in the November 2, 1993, interview that he had been sexually abused by a school teacher, Marcel Lalonde. This was the first time the CAS heard that Mr. Lalonde was an alleged perpetrator of child sexual abuse. To Mr. Carriere's knowledge, the Cornwall police had not informed the CAS of Constable Malloy's 1989 investigation of Marcel Lalonde for sexual abuse. However, it is important to note that the CAS also did not share with the CPS the information it learned on November 2 about Mr. Silmsner's allegation of abuse against Mr. Lalonde. Mr. Carriere agreed that, in retrospect, that would have been a "good idea": "We didn't think of that at the time but I think you know a closer liaison between two agencies and sharing information, I think it's a good idea." Nor did the CAS contact the School Board or Bishop Macdonell School, the school at which Marcel Lalonde was then teaching.

Mr. Bell testified that his interview with David Silmsner was consistent with his experience of other disclosures of historical child sexual abuse by adults: "there

was a tenor sort of of anguish.” It was evident that coming to the CAS office and speaking with CAS workers about his abuse as a child was a “struggle” for Mr. Silmsen, who had difficulty describing the full details of the sexual abuse to which he was allegedly subjected: “they were painful recollections.” Mr. Silmsen was clearly agitated with regard to the Diocese. He was also agitated with regard to the Cornwall police, as he stated that he had been waiting for nine months for the police force to take action on his complaints of sexual abuse.

At the November 4, 1993, CAS team meeting, Greg Bell and Pina DeBellis briefed the group on the Silmsen interview. Inscribed in Mr. Abell’s notes is that David Silmsen “presented credibly.” It is of significance that, in his notes, there is no mention that Mr. Silmsen alleged that school teacher Marcel Lalonde had also abused him.

Mr. Abell was not aware that the Cornwall police had received complaints of child sexual abuse by alleged perpetrator Marcel Lalonde in 1988. The CAS executive director testified that, had the CPS informed him of these complaints, it may have influenced his decision to investigate the Lalonde matter further or notify the school or School Board when Greg Bell eventually informed him of this allegation on December 17, 1993.

David Silmsen alleged in the November 1993 interview with Greg Bell and Ms DeBellis that Marcel Lalonde had sexually abused him. Mr. Silmsen stated that Mr. Lalonde had taught grade 8 students at Bishop Macdonell School and that he believed that Mr. Lalonde was still teaching. The CAS knew that Marcel Lalonde, as a schoolteacher, would be in contact with many children. Yet, the CAS made a decision not to take any action to confirm this information, alert the educational institution, initiate an investigation, or contact the School Board. In my opinion, the CAS should have notified the School Board that an allegation of historical sexual abuse had been made against Marcel Lalonde. Today, this situation would require that the School Board be notified pursuant to the 2001 Eastern Zone Child Protection Protocol.

Mr. Bell testified that the November 2, 1993, interview was the only in-person interview of David Silmsen. Mr. Bell spoke to Mr. Silmsen on November 4 and November 9, 1993, hoping that he would meet again with the CAS to provide further details of the alleged abuse by Ken Seguin and Marcel Lalonde. An interview was set up for November 16, 1993, but Mr. Silmsen did not appear. Mr. Bell contacted him by telephone and stressed that, by speaking with the CAS, Mr. Silmsen would be helping protect other children at risk of abuse.

Late in November 1993, Ken Seguin committed suicide. At that time, the CAS had not yet initiated its investigation of Mr. Seguin. After Mr. Seguin’s death, David Silmsen would not discuss with Mr. Bell the details of the alleged acts of abuse to which he had been subjected in his youth. Mr. Silmsen told the

CAS worker, “I don’t want another death on my conscience.” Mr. Bell testified that he thought that Mr. Seguin’s death likely had an impact on Mr. Silmsner’s unwillingness to disclose the details of the alleged abuse by Marcel Lalonde.

CAS officials such as Bill Carriere claimed that, before his suicide, the CAS had had insufficient information on the alleged abuse by Mr. Seguin and therefore had not wanted to launch an investigation and expose the agency to civil liability or possibly destroy Mr. Seguin’s career. Mr. Carriere stated that, had the CAS possessed additional information, it would have contacted Mr. Seguin’s employer at the Cornwall Probation Office and/or the Ministry of Correctional Services to notify them that Mr. Seguin might be a risk to young probationers. But this was all in hindsight. The CAS never investigated Mr. Seguin and did not notify the Ministry of Correctional Services.

Interviews of Altar Servers

After receiving from the Diocese the names of altar servers currently at St. Andrew’s Parish, Mr. Bell began to contact the boys’ families in mid-November 1993 to ask permission to interview the children. Mr. Bell simply told the parents that the CAS was conducting an investigation, and did not disclose that it concerned allegations of abuse by Father Charles MacDonald. The majority of parents permitted the CAS to interview their children. Mr. Bell and Ms DeBellis interviewed the children alone, without the presence of their parents. They used the Stepwise procedure and statement validity analysis to assess the veracity of statements made by the children in the interviews. None of the current altar servers interviewed from St. Andrew’s Parish disclosed that they had been abused by Father Charles MacDonald.

Contact With Helen and Perry Dunlop

Helen Dunlop came to the CAS office on November 16, 1993, to give Mr. Bell information on Father MacDonald and St. Andrew’s Parish. Constable Dunlop met with Mr. Bell that afternoon. The CPS constable offered to give Mr. Bell leads of people who should be interviewed in the CAS investigation. They agreed to arrange a further meeting at which Constable Dunlop would bring his notes. At the CAS team meeting the following day, it was decided that, if Constable Dunlop was providing the CAS with official information in his capacity as a police officer, the CPS should be notified. When contacted about this issue by Mr. Bell, Constable Dunlop immediately agreed and suggested that the CAS contact Staff Sergeant Derochie. The Staff Sergeant had no problems with Constable Dunlop engaging in such discussions with the Children’s Aid Society.

At the November 29, 1993, meeting with Mr. Bell and Ms DeBellis, Perry Dunlop informed the CAS that Detective Constables Randy Millar and Chris McDonell of the OPP Lancaster Detachment were investigating Ken Seguin's suicide and possibly the issue of extortion. Constable Dunlop told Mr. Bell that there was a pedophile ring. Inscribed in Mr. Bell's notes is the following statement: "[T]here are other perpetrators involved in a ring and we will be hearing about them and this includes Malcolm MacDonald."

On November 30, 1993, Mr. Bell received documents from Malcolm MacDonald, which included some of the documents involved in the financial settlement between the Diocese and David Silmser. They included a copy of the release and undertaking not to disclose, the settlement document, the certificate of independent legal advice, as well as a report from Southdown on Father MacDonald. Malcolm MacDonald asked the CAS for an undertaking that the material provided would remain confidential and be returned to him once the agency no longer required the documents.

Mr. Bell made contact with the OPP and spoke to Officer Ron Wilson on December 14, 1993. The OPP officer related that he had spoken the previous week to David Silmser, who had made it clear that he did not want to have anything to do with the police—either the OPP or the Cornwall Police Service. Mr. Silmser told Officer Wilson that Father MacDonald and Ken Seguin had abused him, but did not mention his former teacher, Marcel Lalonde.

The CAS made a number of attempts in December 1993 and January 1994 to follow up with Constable Dunlop. A number of messages were left, but there was no response. Mr. Carriere instructed Mr. Bell to stress to Constable Dunlop his statutory reporting obligation under the *Child and Family Services Act*. Mr. Bell made contact with the Constable on January 13, 1994, and communicated the officer's statutory obligations, but Constable Dunlop neither conveyed further information nor had further discussions with the CAS about the allegations of abuse against Father Charles MacDonald. At a team meeting on January 31, 1994, the CAS officials involved in Project Blue decided not to pursue Constable Dunlop any further.

Failed Attempt to Interview Father MacDonald

As part of the CAS investigation, Mr. Bell attempted to meet with the alleged perpetrator, Father Charles MacDonald. On January 25, 1994, the CAS sent a letter asking the priest if he would like to meet with the CAS to provide his account of events pertaining to the allegations of child sexual abuse. In this correspondence to Father MacDonald, it was made clear that a decision would be made by the CAS, pursuant to section 75(3) of the *Child and Family Services Act*, whether the

“allegations are verified and thus reportable to the Child Abuse Register.” The CAS asked Father MacDonald to:

... respond to the following questions as truthfully, accurately and in as much detail as possible:

- 1) Have you every [sic] sexually abused a child or children under the age of sixteen years?
- 2) If the answer to #1 is yes, please provide full details of this event.

On January 31, 1994, the CAS received a handwritten note from Father MacDonald, which had been inscribed on the CAS letter. It said:

Jan. 31/94

My answer to the above question (#1) is an emphatic No!

C.F. MacDonald

David Silmser's Allegations of Abuse Are Broadcast on Television: Distrust of Institutions Deepens

In late December 1993, Charlie Greenwell, a television reporter from CJOH, a local television station, tried to contact the executive director of the CAS of SD&G to discuss allegations of abuse by both David Silmser and Jeannette Antoine. Mr. Greenwell told Mr. Abell in a call on December 29, 1993, that there had been a \$35,000 payoff in the settlement of David Silmser. He also discussed Ken Seguin's death, the fact that the police had not pursued the investigation of the allegations of abuse against Mr. Seguin, and that other boys may have been involved. Mr. Greenwell wanted to know the position of the CAS with regard to allegations by adults that they had been abused as children—in other words, the position of the agency with respect to historical child abuse. Inscribed in Mr. Abell's notes of the call with Mr. Greenwell was the comment “Allegations of coverup for long time in the community.”

About a week after this call, on January 6, 1994, a broadcast of Mr. Greenwell's report on the Silmser allegations appeared on television on CJOH. Portions of the handwritten statement that David Silmser had given to the police in February 1993 were broadcast on television.

On January 6, 1994, after the broadcast, Mr. Abell received a call from his predecessor, Tom O'Brien, as well as from former police chief Shaver and Staff Sergeant Wells.

Tom O'Brien, who rarely called Mr. Abell, was upset. He told Mr. Abell that he was contacting him “as a Catholic” community member and relayed that

he knew another alleged victim. It was not clear to Mr. Abell whether Father MacDonald was the alleged perpetrator of abuse against this victim, but the executive director of the CAS did not ask Mr. O'Brien for further details.

Staff Sergeant Brendon Wells, professional standards officer at the Cornwall police, also contacted Mr. Abell. Mr. Greenwell had called the CPS officer asking him if new victims of Father MacDonald had come forward. Mr. Abell told Staff Sergeant Wells that the CAS had not received any calls that day from other alleged victims of the priest. Retired police chief Shaver also spoke to Mr. Abell on January 6, 1994. He was concerned that the quotes and facts in the media were inaccurate.

The following day, David Silmsers, distressed by the reports in the media, telephoned Mr. Abell. He did not know who had released his statement to the media—the CAS, the CPS, or another institution, or a person. It was very evident that David Silmsers had lost trust in the Children's Aid Society and in institutions in general. As Mr. Abell said at the hearings, "he was very upset, very angry and I think he didn't know where to turn or who to trust." This is consistent with the testimony I heard from David Silmsers. Mr. Bell commented that, "[i]n an ongoing sense, his trust in institutions, which was fragile I think to start with, was injured by that experience."

Charlie Greenwell contacted Mr. Abell on January 7, 1994. The CAS executive director told the reporter that he had been misquoted by taking general information elicited from Mr. Abell and applying it to the particulars of the Silmsers case. Mr. Abell "felt he had crossed the line."

In his testimony, Mr. Abell agreed that the media stories in 1994 about David Silmsers and the allegations of cover-up by several institutions in Cornwall had an impact on David Silmsers's relationship with the Children's Aid Society. As Mr. Abell said, Mr. Silmsers "was devastated by the release of that statement."

As I discussed in Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall, there was a press release on the case from the Diocese of Alexandria-Cornwall at that time, and several articles in the Cornwall *Standard-Freeholder*.

Mr. Abell released a media statement on January 10, 1994. He described the mandate of the CAS with regard to children under the age of sixteen and made it clear that the agency was interested in historical allegations of child abuse by adults, as children in the community could be at risk of abuse by the alleged perpetrator. The media statement read in part:

The mandate of the Children's Aid Society of S.D. & G. is to respond to information that children (i.e., individuals who have not yet reached

their sixteenth birthday) have, or may have, been abused. However, the Society has a strong interest in the community's response to allegations by adults that they were abused as children, as those allegations may pertain to the present or future abuse of children. The Society is also interested in providing support and direction to adult victims of abuse when feasible.

Child abuse victims of any age deserve a full opportunity to make their experience known, and to have appropriate action taken on their behalf. Without such an opportunity there is little likelihood that victims will be able to overcome the profound personal effects of their abuse experience.

The community as a whole has a right to expect that all available public resources are being brought to bear on any instances of child abuse which come to light.

Alleged perpetrators deserve the chance to have an objective and competent enquiry into the accusations made against them. As with victims, there will be little likelihood of abusers receiving professional assistance to face and overcome their abusive behaviours without a full airing of the circumstances.

Lastly, it is a well established fact that child abuse which is left unaddressed creates an environment in which all too often other children are destined to suffer the same destructive experience, and thus sow the seeds for still more abuse of future generations.

Mr. Abell testified that, in his view, the CAS should be notified of allegations of historical child abuse by a member of the clergy if the alleged perpetrator continued to have contact with children. This, he said, was consistent with his approach in Project Blue.

“Verification” of Abuse by Father MacDonald

It was at the February 17, 1994, meeting that the CAS officials involved in the Project Blue investigation verified the sexual abuse of David Silmser by Father Charles MacDonald.

As explained by Mr. Bell, some of the factors that led the CAS to verify the abuse by Father MacDonald were:

- a) written police statement—sufficiently credible not to be dismissed
- b) interview w/ D. Silmsner
- c) Msgr. S. in correspondence dated [December 11, 1992] states “D.S. appears to be a credible person”
- d) Silmsner personal statement is consistent with the written statement provided substantially earlier (10 month gap)[.] Silmsner’s personal presentation to agency staff was highly consistent [with] our experience of disclosure behaviours of other verified victims of sexual abuse.
- e) A considerable financial settlement was made to the alleged victim, a sizeable portion of which was contributed by the accused.
- f) The diocese has stated it made the financial settlement to meet the treatment needs of the alleged victim suggesting that they recognized the validity of his claim and their liability for same.
- g) There are other statements relating sexual assaults of young men by Father Charles MacDonald.
- h) Father Charles MacDonald has admitted to having sexual relations with young males.
- i) We have been informed by Msgr. McDougal [sic] that the diocese received an anon. allegation against Fth. MacDonald of an alleged sexual impropriety, which was denied by Fth. Charles.

At the February 17, 1994 CAS meeting, potential risk factors were also listed:

- there is child/victim of Fth. Charlie
- there are other young (adolescent) victims of Fth. Charlie
- Fth. Charlie therefore represents a potential risk to children/male adolescents
- the church should consider carefully the potential risks to children/male adolescents posed by Fth. Charlie.

Thus, the CAS and Project Blue concluded that there was truth to the allegation of child sexual abuse by Father Charles MacDonald of David Silmsner.

After the verification decision was made, the CAS sent letters to the Cornwall Police Service and the Ontario Provincial Police informing them about the outcome of its decision.

The CAS wanted to send a letter to Father Charles MacDonald’s “employer,” Bishop LaRocque, to ensure that he understood the potential risk this priest posed to children. The Bishop was responsible for assigning members of the clergy to various duties, and the CAS wanted to ensure that he took the necessary

measures to protect children. The CAS therefore sought the consent of Father MacDonald to send this information to the Bishop. Greg Bell explained that the same situation applied to teachers alleged to have abused their students. In circumstances in which the CAS verified the abuse, the agency would seek the permission of the teacher to notify his or her school or School Board of the verification decision. Greg Bell stated that when the teacher, clergyman, or other person under CAS investigation did not give their consent to the CAS to notify their respective employer, the agency was placed in a very difficult and awkward position. Mr. Bell explained that, if the CAS notified the employer in the absence of consent, the agency would be violating the individual's right of privacy. But if the CAS failed to advise the employer that it verified abuse of a child, the perpetrator could abuse another young person. He stated that the agency has "agonized" over such issues and that these decisions were complicated from a legal perspective.

In fact, there was a substantial delay in obtaining the consent of Father Charles MacDonald to allow the CAS to notify the Bishop of its verification decision. It was not until the end of November 1994 that the CAS received the consent of Father MacDonald through his lawyer, Malcolm MacDonald, to advise Bishop LaRocque of the conclusion of the Project Blue investigation. The letter to the Diocese, which was sent in January 1995, stated in part:

Based on our investigation of the allegations, we have reached the position that there are reasonable and probable grounds to believe that the abuse of a child did occur. Our view is supported by the result of our inquiries into this specific allegation, as well as statements of other individuals who claim victimization by Father MacDonald.

Given this position, and in the absence of a full sexual behaviours assessment of Father MacDonald, it is our view that he may present a risk to children and young adults under his care and control. We are therefore concerned that any further assignment of Father MacDonald in the Diocese be done with this information in mind.

Although the Bishop was fully aware of the allegations against Father MacDonald, the CAS still felt it was necessary to obtain the consent of Father MacDonald in order to tell the Bishop that it had verified the abuse. I fail to understand why the CAS felt it was necessary to obtain Father MacDonald's consent. Mr. Abell testified that he is not aware of any guideline standards or legislation that requires the CAS to notify an employer once an allegation of abuse has been verified by the CAS. Mr. Bell also stated that he is not aware

of any standards that guide the CAS as to the circumstances in which an employer should be notified. I will discuss the issue of notification of employers in the conclusion to this chapter.

It is important to note that the CAS did not contact the registrar of the Sexual Abuse Register after the CAS verification decision, namely that Father Charles MacDonald sexually abused David Silmser. There is a mandatory obligation that, if the abuse is verified, the CAS file this information in a report with the registrar. In my opinion, the CAS should have registered Father MacDonald's name on the Child Abuse Register.

As I discuss in the following chapters, the OPP issued a press release in December 1994 that criminal charges against the Cornwall priest would not be pursued.

The final CAS team meeting on Project Blue was on March 27, 1995.

Another Alleged Victim of Father MacDonald: John MacDonald

In August 1995, Father Kevin Maloney, a priest in the Diocese of Alexandria-Cornwall, advised Richard Abell that he had received a letter from John MacDonald, who alleged that he also was a victim of abuse by Father Charles MacDonald.

On August 21, 1995, Mr. Abell received a call from David Silmser. He said that another former altar boy, John MacDonald, had also been a victim of abuse by Father MacDonald. Mr. Silmser expressed relief that another victim of abuse had come forward because he "thought he was the only one." Mr. Silmser also said that there was yet another victim, but that he did not want to come forward.

Mr. Abell met with John MacDonald on September 25, 1995.

Mr. Abell contacted Inspector Tim Smith to relay that John MacDonald would willingly discuss his allegations with the Ontario Provincial Police. Mr. Abell also spoke to Bishop LaRocque about providing counselling for John MacDonald. Mr. Abell testified that he was "pleasantly surprised" that the Bishop was very forthcoming in quickly agreeing to fund counselling for John MacDonald.

Ottawa Police Service Investigates

During the course of the Project Blue investigation, Staff Sergeant Blake of the Ottawa Police Service met with Richard Abell on January 18, 1994. As I mentioned in Chapter 6, on the institutional response of the Cornwall Police Service, the Ottawa police, an external police force, was reviewing the investigation by the CPS of the Silmser complaint. Staff Sergeant Blake asked Mr. Abell whether, in his view, there was a cover-up of the Silmser allegations of abuse. Mr. Abell replied that, although this possibility had crossed his mind, he had not seen any evidence to substantiate a cover-up.

Reflections on Project Blue

The decision by Richard Abell and his senior managers to commence the Project Blue investigation in October 1993 was a good one. He and his peers were concerned that there may be other children at risk of abuse by Father Charles MacDonald, who was in active ministry at the time. The team he assembled was clearly qualified to do the work assigned and, with few exceptions, did this work in a thorough and efficient manner.

Early on in this investigation, the CAS attempted to get the CPS to re-open its investigation and, when that failed, tried the same with the OPP. The CAS then carried out its child protection investigation without a concurrent police investigation. The CAS investigators asked for the settlement release and other documentation shortly after commencing Project Blue. They also interviewed as many current altar servers as were willing to meet with them.

They verified, in accordance with their mandate, the allegation of child sexual abuse of David Silmsr by Father Charles MacDonald. None of the current altar servers they interviewed reported abuse allegations. In their verification letter to the priest's employer, they outlined that the priest "may present a risk to children and young adults under his care and control" and thus expressed concern about any further assignment of him to priestly duties.

As I have noted, there were some aspects of this institutional response that could have been approached differently. When the Project Blue investigators first heard from David Silmsr about his allegations against teacher Marcel Lalonde, they should have contacted the CPS. Mr. Carriere acknowledged this. In hindsight, I am of the view that the CAS should have contacted his Mr. Lalonde's employer, as he was a teacher employed in a position of trust with constant access to children. Unfortunately, even when the CPS became aware of Mr. Silmsr's allegations against Marcel Lalonde, its officers did not recall prior allegations against him from the late 1980s. In addition, when Detective Inspector Tim Smith interviewed David Silmsr in February 1994 and gleaned further information about Mr. Silmsr's allegations against Marcel Lalonde, he did not share this information with the CAS. These problems are discussed in Chapter 6, on the CPS, and Chapter 7, on the OPP, respectively. I have no doubt that if this information had been shared with the CAS, its investigators would have notified the School Board and investigated Marcel Lalonde in 1994.

During the Project Blue investigation, Constable Dunlop advised Mr. Bell that there was a pedophile ring operating in the Cornwall area. A number of attempts were made to obtain further information from Constable Dunlop, including notifying him of his statutory obligations. His non-reporting is curious to say the least, given his initial report. Although CAS officials did try repeatedly

to have Constable Dunlop comply with his statutory responsibilities, in hindsight they should have continued their efforts beyond January 31, 1994.

Mr. Abell testified about his discussion with Mr. O'Brien and his information about a further victim. Whether this was a further alleged victim of Father MacDonald or simply related to that case, I agree with Mr. Abell's acknowledgment that he should have explored this issue further with Mr. O'Brien.

After the CAS "verified" Mr. Silmsen's allegations of abuse, it did not contact the registrar of the Child Abuse Register. While the value of the registry has been questioned, and I discuss this in the introductory sections of this chapter, the practice back in 1994 was that, if abuse was verified, the verified abuser's name would be given to the Register. This process was not followed with regard to Father MacDonald and it should have been.

Some might argue that Project Blue should have questioned former altar boys in addition to current ones. While this may have turned up other allegations and led to the provision of counselling and other support to more alleged victims, I do not fault the CAS for restricting its investigation. Its mandate is to determine if children are currently at risk. The interviewing of former altar boys was for the police to do in their investigation of the criminal complaints.

In closing, the decision by Constable Dunlop to report the historical sexual abuse allegations and the decision of the CAS to act upon them and conduct a full investigation were, in my view, correct. Historical allegations, like current ones, should be covered by the duty to report provisions in all circumstances in which the alleged perpetrator continues to be a potential risk to children.

Relationship Between CAS and Project Truth Investigators

The relationship and interactions between the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) and the Ontario Provincial Police (OPP) are described in Chapter 7 in the section dealing with the initial plan for Project Truth. I have heard the evidence of both Richard Abell and Detective Inspector Tim Smith about their initial meeting and the ongoing interactions between them and their agencies during the Project Truth investigation. Both Detective Inspector Smith and Mr. Abell had positive things to say about each other and also about the nature of their ongoing working relationship.

Within days of completing their investigative plan for Project Truth, Detective Inspector Smith, together with Detective Constables Steve Seguin and Don Genier, had an initial meeting on May 21, 1997, with Mr. Abell and his colleague Bill Carriere. From all accounts, the first meeting was a good exchange of

ideas and information. The CAS officials were apprised of the OPP's plan for its investigation and, in keeping with this, a copy of the Fantino Brief was left with CAS officials for their review. Both Mr. Abell and Detective Inspector Smith took notes of the meeting. Mr. Abell's notes set out most of the decisions made by the parties, and these are set out in detail in the OPP chapter, as mentioned above.

I noted the acknowledgment by both Detective Inspector Smith and Mr. Abell in their testimony that the informal protocol they entered into that day should have been put in writing and formalized. Several of the ongoing tasks agreed to, in particular commitments by the OPP, were not carried through. Having a formal protocol or letter of understanding would, in my view, have made full compliance with these tasks more likely.

Although information was shared by Project Truth officers with CAS officials at or around the time of some arrests, more information should have been shared with the CAS, and information that was shared could have been shared in a more timely fashion. If the OPP had systematically informed the CAS of all Project Truth suspects, the CAS could have better assessed whether there were children at risk. In addition, fully informing the CAS would have allowed the agency to assist victims and alleged victims and keep children out of harm's way.

Developing and instituting a more formal protocol was the responsibility of both institutions. In the case of the Project Truth investigation, I am of the view that the CAS should have instituted more formal protocols and procedures to assure more effective cooperation and communication during the course of the Project Truth investigation. As I note in Chapter 6, some of the allegations against Jean Luc Leblanc and Jacques Leduc were current. Although some information was shared, more could have been done, and joint investigations might have resulted.

As I indicated in the development of protocols section, in the past, the CAS of SD&G had access to excellent joint police-CAS training offered by the Institute for the Prevention of Child Abuse and by the Ontario Association of Children's Aid Societies. This valuable training ceased to be available in 1995. In my view, it is imperative that joint training between social workers and police officers be re-instituted in Ontario. The training should incorporate training on reports of historical sexual abuse.

C-14

C-14 was born July 20, 1962. His father suffered from poor health and his mother was unable to care for her four children. The children were therefore brought

into the care of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) in 1972. C-14 became a permanent Crown ward in 1974. Prior to coming into the care of the CAS of SD&G, C-14 was in the care of the Ottawa CAS. Between 1972 and 1980, C-14 was placed in ten different foster or group homes. None of C-14's siblings were placed in the same homes as he was. C-14 had various CAS workers who were responsible for his file while he was in the agency's care. Angelo Towndale, who became a supervisor in 1969, remained the supervisor responsible for C-14's file throughout his wardship.

C-14 alleged that he was physically and sexually abused multiple times as a child while in the care of the CAS. He reported these allegations to the Ontario Provincial Police (OPP) in Morrisburg and later to Project Truth. This section will consider the institutional response of the CAS of SD&G to the reported allegations of abuse made by C-14 and his request for access to his file.

The Barber Foster Home

C-14 was initially placed in a foster home run by Ken and Muriel Barber in June 1972. He was almost ten years old. The Barbers had no children of their own but they had a number of foster children. Arthur Sypes, a twenty-three-year-old mentally challenged man, was also living at the Barbers. He had been released from a long-term-care facility in Smiths Falls into the Barbers' care and was living with them full-time and doing work on their farm.

Ms Barber had been previously married, with the surname Lewis. She and her first husband had been foster parents, but the home was closed shortly after Mr. Lewis suddenly died. Ms Lewis remarried and became Ms Barber.

C-14 Alleges Physical Abuse by the Barbers

When he came to the Barber home, C-14 was "very frightened" of the foster father because he had a "very terse attitude." Initially things were fine. C-14 testified that approximately one month after he came to the home, another foster child, "Ronny," was beaten by Mr. Barber on the bed with a thrasher belt. C-14 was nearby at the time, and he said Mr. Barber hit him (C-14) across the legs with the belt. There were other occasions when C-14 witnessed Mr. Barber beat this other boy, and he also recalled that this boy made many attempts to run away.

According to C-14, his physical abuse by Mr. and Ms Barber started after he had been at the home for approximately one month. Some of his allegations of abuse include:

- being kicked in the testicles with steel-toed work boots;
- being beaten on the head with a hardwood brush handle until on the verge of nausea;
- being chased around with horsewhips and sometimes cornered;
- being whipped on the face, arms, and testicles with what resembled a razor strap or part of a thrasher belt;
- Mrs. Barber backing him into the corner, stepping on his feet, and punching him in the face or raking his face with her rings.

C-14 also alleged that on one occasion when he was doing chores, Mr. Barber flew into a rage and chased him out the back of the barn near the manure pile, where C-14 fell in a pool of cow urine and inhaled it into his lungs. C-14 believed he contracted pneumonia as a result. He spent approximately two weeks in the Winchester Memorial Hospital but was unable to explain to anybody what was happening at the foster home. According to C-14, Ms Barber told him that he should not say anything that might embarrass her publicly.

C-14 testified that there were many times when there were marks on his body from the abuse, and that these marks would have been observed by other children in the home. C-14 believed that he went to see a doctor who saw the markings, but that Ms Barber was extremely domineering and was always in the room with him during medical appointments. When the doctor tried to raise the issue of the marks, she explained them by saying he was clumsy.

C-14 Alleges Sexual Abuse by Arthur Sypes

In addition to the physical abuse by the Barbers, C-14 alleged he was sexually abused by Arthur Sypes while in the Barber home. C-14 testified that the sexual abuse began shortly after he came into the home. He explained that he was often left in the care of Mr. Sypes when the foster parents went to social functions. According to C-14, Mr. Sypes would chase him around the house, pin him to the ground, and fondle his genitals. C-14 testified that the abuse occurred until he was approximately fourteen years old, at which point he had grown much bigger and could defend himself. One time when Mr. Sypes tried to chase him, C-14 turned and chased him until Mr. Sypes barricaded himself in the bathroom. There were no further attempts at abuse by Mr. Sypes after this incident, although C-14 still had to sleep in the same room as him. He testified that the sleeping arrangements were “very nerve-wracking.”

C-14 testified that he tried to run away from the home many times. Although he was not picked up, he had to return, as he had overheard a conversation between his first CAS worker and the foster parents that he would not get another placement but would only be brought back to the Barbers’ again.

Interactions With the CAS While at the Barber Foster Home

Jim Wylie was C-14's first social worker after he had been placed in the Barber home. C-14 testified that, when he was taken into the Barber home, Mr. Wylie made it clear that he was to be treated with a "heavy hand"; the family was told not to spare the rod. C-14 said he overheard Mr. Wylie talking to Ms Barber, and she was told that even if C-14 asked for another placement he wouldn't be given one. In his case notes, Mr. Wylie noted that C-14 was manipulative and would request a move during difficult situations. According to the notes, Mr. Wylie advised C-14 that it would not be possible to be moved to another placement, and that he would not be returning home for some time. In my view, telling a child that he would not be moved regardless of the circumstances of the request could discourage children from reporting abuse, as they might believe that they would be returned to the home regardless. Although I appreciate that children may request a new placement for reasons other than abuse, and that such requests cannot for many reasons be accommodated, the possibility of removal from a foster home should never be explicitly precluded.

Mr. Wylie was C-14's worker for just over one month. Rod Rabey was C-14's second worker. According to C-14, their relationship was initially very good, and, in fact, Mr. Rabey had referred to him as the "icing on the cake," meaning that C-14 was helpful and a model child. C-14 recalled that Mr. Rabey came to the house from time to time, but he was more focused on speaking with the foster mother than speaking with him. According to C-14, Mr. Rabey would see him when he came to the house but not without the foster mother being present.

C-14 testified that he never spoke to Mr. Rabey about the sexual abuse at the Barber home but did tell him that he was strapped. According to C-14, Mr. Rabey met with him at school and asked him whether Mr. Barber struck him with a strap, and C-14 told him about the abuse with the strap. C-14 did not tell him anything else about what happened to him in the Barber home. Nothing else was asked, and C-14 did not volunteer further information. He testified that he felt good that he had finally told somebody about the abuse. He believed, however, that nothing was done about it. C-14 said that when he arrived home that day, Mr. Rabey was in the living room talking with Ms Barber. Mr. Rabey gave him a lecture about how he should not exaggerate and said that C-14 was doing these things to receive attention.

Case notes recorded by Mr. Rabey indicate that visits with C-14 were monthly and were conducted both at home and at school. According to C-14, however, Mr. Rabey saw him only once at the school. He contended that this was the only time Mr. Rabey saw him without his foster mother present. C-14 acknowledged that he had the opportunity to see Mr. Rabey in private at a summer camp run by

the CAS. He explained that there had been an incident that discouraged him from talking to Mr. Rabey. In consoling a boy who had been slapped by other kids, C-14 told him he had been beaten by his foster father. A counsellor brought this to the attention of Mr. Rabey, who dismissed it and told the counsellor that C-14 tended to exaggerate things. Following this, C-14 would not confide in Mr. Rabey.

In September 1974, Bryan Keough became C-14's worker. According to C-14, he visited the home from time to time but never saw C-14 without the foster mother present. C-14 described these meetings as follows:

By then, I had been severely abused and I was a very impulsive child. I was acting out because of the abuse, the sexual abuse, the physical abuse.

The meetings were more like tribunals. Both Mrs. Barber and Mr. Keough would sit at opposing ends of the kitchen table. I would sit in the middle. I would be chided over my poor behaviour and I would be blamed for everything.

... If I tried to respond to anything, Mrs. Barber would put words in my mouth. She would finish my sentences.

C-14 recalled that he would get into screaming matches with Ms Barber, and she would call Mr. Keough, who told C-14 that he would be eighteen soon and should not rock the boat. He was told that when he was on his own he could do whatever he pleased, but for the time being he was just to bear it. C-14 was around fourteen years old at the time. C-14 also testified that Mr. Keough told Ms Barber to give him a good slap on the face and that, on another occasion, Mr. Keough told the foster mother, "knock his f'ing teeth down his throat until he learns to shut his mouth." When Mr. Keough testified, he denied that he had said either of these things.

Although Mr. Keough recalled many emotional discussions at the kitchen table in the Barber home, during which they would discuss C-14's behaviour and Ms Barber would often interrupt C-14 while he was speaking, he denied that he never saw C-14 alone. Mr. Keough's case notes indicate: "The foster parents and young lad have been visited approximately every month during the above period. On a number of these occasion [sic] I saw both the foster mother and [C-14] together and then separately." In a previous section of this chapter, I comment on the importance on the CAS workers conducting visits outside of the foster homes.

The following comment was made in Mr. Keough's case notes:

Mr. and Mrs. Barber are very fair, loving, firm foster parents. This is not always to [C-14's] advantage, at least immediate advantage, especially when he gets a good slap, however it is geared to his positive progress. They need Agency support and backing and have a low breaking point ...

Mr. Keough further noted that at times the punishment was too harsh for the wrongdoing committed.

C-14 testified that it would have been helpful when he was a child in the care of the Barbers to have someone independent of the Barbers and the CAS whom he could speak to and inform about what was happening to him. For example, if there had been an ombudsman or a group separate from the CAS that was looking after his interests, C-14 would have contacted them.

Effects of the Abuse at the Barbers

C-14 testified that, while at the Barbers, he "gave up on school" and stopped studying. Although he felt the teachers knew something was wrong, he acknowledged that he did not discuss the problems he was having at the Barbers with any of his teachers. As a result of being hit on the head a number of times, C-14 testified that he started suffering from chronic migraine headaches and still suffers from them today.

C-14 was removed from the Barber home on August 29, 1977, at both his and the foster parents' request. According to the case notes, there was an unannounced visit by C-14's mother and one his brothers following which "all hell broke loose," and both C-14 and the foster parents requested that he be moved.

The Hubert Foster Home

C-14 was placed in a foster home run by Mr. and Ms Hubert from late August 1977 to March 1978. Bryan Keough remained his worker. There was no physical or sexual abuse at this home. However, while at the Huberts he disclosed the physical abuse he alleges that he suffered at the Barbers'.

C-14 Discloses Abuse by the Barbers to the Huberts

C-14 testified that, shortly after arriving at the Hubert home, he told Ms Hubert about some of the incidents of abuse at the Barber foster home. He thought that, initially, Ms Hubert believed his stories were incredible, but she questioned him regularly and remarked that his stories never seemed to change. According to

C-14, at one point, he showed her bruises he had on his back from a beating he had received before leaving the Barber home.

C-14 did not tell Ms Hubert about the sexual abuse. He said that this was because when he had tried to talk about the physical abuse with his previous worker, Rod Rabey, nothing had been done and he was ridiculed for the allegations. In addition, C-14 felt a lot of anxiety, guilt, and shame with respect to the sexual abuse. He testified that the attitude prevailing at the time—that children were not to be believed—made it difficult to disclose the sexual abuse: “If someone would have listened to what I was saying about the physical abuse, it was only a matter of time before the sexual abuse would have been disclosed.”

The CAS Is Advised of Abuse

Shortly after C-14's disclosure to Ms Hubert, there was a meeting between C-14, Ms Hubert, and Mr. Keough to discuss the allegations of physical abuse at the Barbers'. C-14 reported the details of the physical abuse to Mr. Keough, including that he had been kicked with steel-toed boots, horsewhipped, robbed of his clothing money, and not taken care of when ill.

Bryan Keough recalled that C-14 was extremely aggressive towards him. C-14 alleged he had been the victim of systematic abuse in the Barber home for years, and he was very upset that Mr. Keough had not picked up on it. He requested a new social worker. Mr. Keough testified that this was the first time that he had been made aware of the alleged abuse. Although he had had concerns, which were noted in the file, that some of the Barbers' discipline was too harsh, he testified that C-14 never spoke to him about the things he spoke about during the meeting on November 22, 1977.

According to Mr. Keough, he told C-14 that, if what he alleged were true, then he was justified in requesting an investigation and a new social worker because Mr. Keough had failed him. During this meeting, C-14 advised Mr. Keough that his supervisors were already aware of the allegations. Mr. Keough was surprised by this. At the time, Mr. Keough's superior was Angelo Towndale.

In September or October 1977, Mr. Towndale had arranged to have a questionnaire sent to all teenagers in care regarding how they were being treated in foster care. One of the reasons for the questionnaire was what had been happening in the Second Street group home. Mr. Towndale wanted to find out if this type of physical punishment was occurring in other places.

C-14 filled out the questionnaire. Mr. Towndale testified that he was upset when he read the report. He recalled speaking to the foster mother, Ms Hubert, and then to C-14. According to Mr. Towndale, he told C-14 that he believed him, that the treatment he received was not justified, and that the Barber foster home

would no longer be used. Mr. Towndale said he encouraged C-14 to speak to Mr. Keough about his allegations. There were no allegations of sexual abuse in the questionnaire completed by C-14.

Mr. Keough was upset that Mr. Towndale had not advised him of the allegations. He felt that, if he had known, he would have been better prepared for the meeting with C-14 in November 1977. Mr. Towndale testified that he did not speak to Mr. Keough himself because he received the information the day before he was leaving on holidays, but that he had directed Mary Gratton to inform Mr. Keough and the executive director, Tom O'Brien.

Although I applaud Mr. Towndale's initiative in sending this type of questionnaire to children in care following the allegations of abuse coming out of the Second Street group home, it is important that the frontline workers, who work directly with the children, be advised of such initiatives and any outcomes.

In addition to Ms Hubert and Bryan Keough, C-14 also spoke to Ms Gratton, who was a foster home finder, and Mr. Towndale about his experiences at the Barber home. According to C-14, he told Mr. Towndale or Ms Gratton about the comments he alleged Mr. Keough made to Ms Barber about knocking his teeth down his throat. Mr. Towndale did not recall being told this by C-14.

After disclosing these allegations of physical abuse to a number of CAS officials, C-14 testified that he was not offered any help or counselling by the CAS. Both Mr. Towndale and Mr. Keough acknowledged that they did not arrange any counselling for C-14 or arrange for him to be seen by a medical doctor. In addition, the police were not notified about C-14's allegations.

Bryan Keough Conducts an Investigation

Bryan Keough conducted an investigation into C-14's allegations of abuse. The investigation took approximately one week, during which time Mr. Keough reviewed the recordings of previous CAS workers and interviewed a number of people including other child protection workers and other children who had been placed in the Barber home while C-14 was there. One child who Mr. Keough interviewed stated that the expectations in the home were high and that the foster parents took good physical care of the children. However, she also noted that C-14 was often punished too severely for his wrongdoings and was beaten by Ms Barber, who would lose control and hit him with everything she could get her hands on, often leaving bruises. The child protection workers Mr. Keough interviewed all believed the Barber home was an excellent foster home.

Mr. Keough did not prepare a report but he recorded the following conclusions in the case recordings:

There is a lot that one must give and take from [C-14's] accusations, however I conclude that [C-14] did at times receive treatment that was far too harsh and could be labeled a beating. I further believe that at such times [C-14] had driven the foster parents to a point where they lost control, and later would regret their actions ...

As the foster parents did not to the day of [C-14's] departure from the home come to grips with this problem, I would recommend that we place no more children in their home. This would be quite simple as the Barbers requested from me, once [C-14] left, that their home be closed.

The Barber home was closed and a closing summary prepared on January 25, 1978. C-14 recalled that Mr. Towndale called him after the investigation was completed and told him that the Barber home was "blacklisted."

Despite the fact that C-14 alleged that Mr. Keough was incompetent for failing to pick up on the abuse while he was at the Barber home, Mr. Keough did not think it was improper for him to do the investigation himself. His supervisor, Angelo Towndale, however, did think it was unusual that Mr. Keough was investigating this matter. According to Mr. Towndale, Mr. Keough should have had the Protection Department or another CAS department to do the investigation. In addition, he should have reported to his supervisor about the matter and the action he intended to take. Mr. Towndale testified that, because he was on holidays at the time, Mr. Keough should have reported to Tom O'Brien or Dave Devlin. Ian MacLean testified that, today, when a complaint is launched against a social worker, a different social worker would conduct the investigation.

Like many of the CAS cases examined during the Inquiry, this occurred several decades ago. The policies, systems, and procedures in place today are quite different, and it is likely that if the same situation arose today it would be handled differently. This said, I am of the view that Mr. Keough should have requested that another social worker conduct the investigation into C-14's allegations. C-14 was clearly accusing Mr. Keough of failing to notice the abuse, in addition to alleging that Mr. Keough had always sided with the foster parents. In light of what was being alleged, these accusations against Mr. Keough alone put him in a conflict situation such that he should not have conducted the interviews. Aside from specific accusations by C-14 against Mr. Keough, if the abuse alleged by C-14 did occur, it would presumably raise questions about Mr. Keough's observations and interactions with C-14 and how he could have failed to notice the abuse and its effect on him.

I am also concerned that the police were not contacted. Although corporal punishment of children was an accepted practice in the 1970s, Mr. Keough acknowledged in his case recordings that the punishment of C-14 had been too harsh and that he had received "beatings." The treatment was deemed severe enough for Mr. Keough to recommend closing the home. The Barbers' actions may have amounted to assault, and the police should have been contacted to conduct their own investigation. In addition, counselling should have been offered to C-14. Regardless of whether the actions of the Barbers were criminal, the boy was clearly affected by the experience, and he should have been offered counselling or other support. Removing him from the foster home was not a sufficient response to his needs.

Transfer From the Hubert Foster Home to the Lapensee Group Home

C-14 was removed from the Hubert foster home in early March 1978 at the request of the foster parents. He was transferred to the Lapensee group home in Martintown, where he stayed for approximately three and a half months. During this time, Ian MacLean was his worker. Mr. MacLean testified that he had reviewed C-14's file and was aware that C-14 had made allegations of mistreatment at the Barber foster home.

C-14 testified that, while at the Lapensee group home, he was physically assaulted by one of the Lapensees' children. He did not report the incident, as he thought nobody would listen. According to C-14, he had a lot of problems while in this home. He was distraught over the incident with the Lapensees' son, he was having problems in school, and had started sleep walking.

C-14 ran away with another boy from the home, following which he was placed temporarily in the Cieslewicz receiving home.

The MacIntosh Foster Home

C-14 was placed in the MacIntosh foster home in Apple Hill on July 6, 1978, just before his sixteenth birthday. Ian MacLean remained C-14's worker. There was no physical abuse alleged at this home, but C-14 alleged that, while at the home, he was sexually abused by a man named Frank Rolland.

Mr. Rolland was approximately sixty years old. He lived in Montreal but had made arrangements with Stewart MacIntosh to keep honeybees on his property. C-14 testified that Mr. Rolland learned from other children in the home that C-14 wanted to buy a motorcycle and said that if C-14 worked for him for the summer, he would help him buy a dirt bike at the end of the season. Ian MacLean recalled that, during his first visit with Ms MacIntosh and C-14, it was mentioned that C-14 had met Mr. Rolland. Mr. MacLean saw this as a potential "big brother" relationship.

Alleged Sexual Abuse by Frank Rolland

During the summer of 1978, Mr. Rolland approached the CAS for permission to bring C-14 to his home in Montreal and to show him around the city. Mr. MacLean asked that Mr. Rolland attend the CAS office in Cornwall for an interview so Mr. MacLean could find out more about him. Prior to this meeting, Mr. MacLean had never met Mr. Rolland and had never witnessed C-14 and Mr. Rolland together. C-14 recalled that he accompanied Mr. Rolland to the CAS office but remained in the car. He testified that Mr. Rolland received a letter from the CAS that allowed him to take C-14 to Montreal. Ian MacLean explained that the executive director of the CAS at the time, Tom O'Brien, had to sign a form to give Mr. Rolland permission to take C-14 out of the province. The practice was that the worker would meet with the adult seeking permission to take the ward out of the home. The worker would then go to Mr. O'Brien and have him sign the form. The worker had to satisfy the executive director that he or she did not feel there was any risk to the child and that it would be beneficial for the child to go on the outing.

Ian MacLean relied on conversations he had with the MacIntoshes and on his personal interview in assessing Frank Rolland. He did not ask for any other references. He did not search local CAS files or contact the CAS in Montreal to see if his name came up. He did not contact the local police or the police in Quebec to find out whether Mr. Rolland had a police record. According to Mr. MacLean, that was not the practice at the time. As discussed in the introduction to this chapter, the policies and procedures of the CAS have evolved considerably since the late 1970s, when C-14 was in the care of the CAS. Today, there would be far more rigorous screening of anyone who would take a child out of a foster home or group home.

C-14 testified that, on the second evening in Montreal, Mr. Rolland gave him coffee that made him feel dizzy and strange. Mr. Rolland told him there was Valium in the coffee. According to C-14, he passed out, and when he awoke the next day the bedding was dishevelled. C-14 did not know what happened until much later. In the early 1990s, he was admitted to hospital for difficulties sleeping and, after being administered a powerful sedative and falling asleep, C-14 had a flashback of Mr. Rolland sexually abusing him. C-14 testified that there was more sexual abuse on the trip but most of what happened occurred when he was in a drug-induced haze. He also alleged that he was sexually abused by Mr. Rolland in the car a mile down the road from the MacIntosh's home, upon returning from Montreal.

C-14 did not tell anybody that summer about what Frank Rolland did to him. He thought nobody would believe him. Ian MacLean did not recall if he spoke with C-14 after the trip to Montreal. He did, however, speak with Mr. Rolland, who

told him that C-14 was exposing himself and masturbating in the sight of Mr. Rolland and that he often struck Mr. Rolland when disagreements occurred. Mr. MacLean testified that this was the first incident of alleged sexual misbehaviour on C-14's part, and he did not feel it was necessary to do anything except record it and be aware of it. He acknowledged that the best practice would have been to speak to C-14 and possibly the foster parents to find out what was going on. Mr. MacLean could not recall whether he spoke to C-14 about this report from Mr. Rolland.

C-14 testified that, when he reviewed his file in 1995, this was the first time he saw this recording, and he was "incensed." The fact that this behaviour might be indicative of sexual abuse did not enter Ian MacLean's mind. He testified that it did not occur to him that Mr. Rolland might have had something to do with this alleged behaviour by C-14. Mr. MacLean thought that Mr. Rolland was "a very mild-mannered man" and that abuse was not in his character.

Although he could not remember if he did or not, Mr. MacLean acknowledged that he should have brought Mr. Rolland's complaint to C-14's attention. I agree. In my opinion, Mr. MacLean should have immediately spoken with C-14 about these allegations by Mr. Rolland. In addition, I am of the view that, regardless of Mr. Rolland's statements about C-14, Mr. MacLean should have met with C-14 after the trip to Montreal to ensure that the trip went well and that C-14 did not have any concerns or problems. I would expect that, today, significantly more detail would be recorded about any trips taken by children under CAS care than was recorded in the case of C-14.

C-14 did not have any further contact with Frank Rolland after the trip to Montreal. Mr. Rolland died in autumn of 1978. C-14 left the MacIntosh home on November 30, 1978, at the request of the foster parents.

Counselling

In the early summer of 1978, prior to C-14 moving to the MacIntosh home, Ian MacLean arranged for C-14 to see a psychometrist, Diane Latreille, at the Cornwall General Hospital. Mr. MacLean made the appointment after C-14 started to exhibit certain behaviours, such as wandering around at night, in the Lapensee Home. Based on these behaviours and what Mr. MacLean had read about C-14's previous behaviour and allegations at the other foster home, he felt it was wise to get a psychological assessment done.

C-14's first meeting with Ms Latreille was on or around July 13, 1978. She reported that initially C-14 "presented as a suspicious, closed, 15-year old who did not volunteer any information about himself," but that he gradually relaxed and was able to laugh and converse freely by the end of the first session. C-14 did not disclose being sexually abused by Arthur Sypes during this meeting. The

report indicated that C-14 was told to contact Ms Latreille at any time if he wanted to discuss anything. C-14 never contacted her.

C-14's second visit with Ms Latreille was in November 1978. Ian MacLean did not recall taking any steps to advise her about the behaviour Mr. Rolland had reported to him during the summer.

C-14 testified that, because Ms Latreille was a referral from the CAS, he was "very guarded" with her throughout both visits. Although Mr. MacLean did the right thing in arranging for C-14 to see a counsellor, it should be ensured, given that some children who have been abused while in CAS care may not trust the agency, that the individual the child sees is truly independent of the CAS and that the child is aware of that.

Termination of C-14's Wardship

After leaving the MacIntosh foster home, C-14 spent approximately eight to nine months at the Chrétien boarding home. Things did not work out in this home, and he was moved to St. Lawrence College residence, where he stayed for one month.

In late August 1979, C-14 was moved to the Barlow foster home in Long Sault. According to C-14, he was physically assaulted in that home by the foster mother's boyfriend. However, he did not tell the CAS about this because "I was called a liar all the time." Instead, C-14 decided to "get even" and stole approximately \$20 in change from a piggybank. According to C-14, when the foster mother found out about it, she kicked him out of the house, following which C-14 lived in his car.

According to the case recordings, C-14 contacted his CAS worker, Bill McNally, on November 26, 1979, and informed him that he was quitting school and no longer wanted CAS assistance. During his testimony, C-14 disagreed with this recording and maintained that his worker had told him that the CAS was cutting ties with him because he was no longer in school.

According to the CAS case recordings, a few months later, in February 1990, C-14 was re-admitted to CAS care at his request. He was placed in the group home of Mr. and Ms Champagne. He remained there only a couple of weeks. C-14 spent the last few months of his wardship at the King George Hotel. On June 18, 1980, C-14's Crown wardship was terminated.

C-14 Discloses Sexual Abuse Allegations to Bryan Keough

C-14 testified that in or around 1981-1982, he called Bryan Keough. He testified:

I was very upset with the way that things were going. I had difficulty holding a job. I was anxious all the time. I was depressed. I didn't really

know what was wrong with me. I had been blamed so much for what had happened to me. I just assumed something was wrong with me.

According to C-14, during the conversation he reiterated the physical abuse he had been through and blamed Mr. Keough for a lot of things that were going on in his life. C-14 said that he also told Mr. Keough about the sexual abuse by Arthur Sypes and Frank Rolland. C-14 testified that Mr. Keough was unresponsive during this call and that he did not suggest that C-14 contact the police nor did he give him any advice about how to proceed. According to C-14, neither Mr. Keough nor anyone else at the CAS followed up with him after that call.

Bryan Keough testified that he did not recall receiving this phone call and he was not aware of C-14's allegations of sexual abuse.

C-14 Attempts to Get Information About His File From the CAS

C-14 testified that, in 1991, he went to the Ottawa CAS looking for answers. He wanted to know what had happened regarding the abuse in the Barber foster home. C-14 received a document from the CAS of SD&G, entitled "Background Social History," prepared by Lise Stanley and dated May 30, 1991. C-14 was not satisfied with this document, and in fact he was upset by it. With respect to his allegations of physical abuse by the Barbers, the report stated "It was further believed that at such times, [C-14] had driven the foster parents to a point where they lost control and later would regret their actions." C-14 took exception to the fact that the CAS appeared to blame him for what had happened.

C-14 had a conversation with CAS worker Lorenzo Murphy on or about July 23, 1991. Prior to this call, Mr. Murphy had spoken to a supervisor at the Ottawa CAS who had spoken with C-14. According to Mr. Murphy's notes of the call, this supervisor had recommended two different psychiatrists to C-14. C-14 testified that he had never been recommended a psychiatrist by the CAS and that, at this point, he had been diagnosed with post-traumatic stress disorder and was already seeing someone.

Mr. Murphy's notes of the call with C-14 also indicate that C-14 had never reported the sexual abuse by Mr. Sypes and was only now beginning to talk about it. C-14 disagreed with this note, stating that he had told Mr. Keough about the sexual abuse in 1981 or 1982. Although Mr. Murphy's notes say he "feels charges can't be laid as Arthur is developmentally handicapped," C-14 maintained that he was adamant that the CAS investigate his allegations thoroughly.

Mr. Murphy noted that C-14 "feels that Bryan Keough knew some of what was going on" and that Mr. Keough once saw him when he had blood running from his mouth from a beating. Mr. Keough did not recall any such incident. According

to Mr. Murphy's notes of the call, C-14 wanted to review his file and talk about the abuse he had suffered, but that he wanted to be connected with a counsellor before probing things further. Mr. Murphy's case notes state that he agreed to meet further with C-14 and explore counselling options. C-14 testified that there was no agreement to speak further and no follow-up from Mr. Murphy.

C-14 Discloses Abuse to the OPP; No Charges Are Laid

In July 1991, C-14 contacted the OPP in Morrisburg because he wanted answers and did not think he was getting anywhere with the CAS. There were no charges laid as a result of this contact. Unfortunately, other than a few excerpts from the notes of the investigating officer, Constable Huffey, there was no evidence put before me explaining why Constable Huffey concluded that charges should not be laid.

The CAS Terminates C-14's File

A termination report, dated May 15, 1992, noted that C-14's allegations had been discussed with the police and that no charges had been laid; that C-14 had been invited to meet with Lorenzo Murphy and didn't; and that he had not come in to review his file. The report further stated that C-14 felt he needed more counselling before he could pursue allegations further or attend a meeting and review his file. According to the report, the file was terminated because there were no present protection concerns, as the alleged victim was an adult and the foster home had been closed fifteen years earlier.

C-14 Attempts to Obtain His CAS File

In or around July 1993, C-14 had a conversation with the executive director of the CAS, Richard Abell, about accessing his file. Mr. Abell recalled that C-14 had two concerns. First, in his view the summaries prepared of his file were only negative and, second, things were taking too long and he was not getting sufficient disclosure.

In 1994, C-14 retained a lawyer to assist him in getting access to his CAS files. Between May 1994 and March 1995, there was correspondence between his lawyer and Mr. Abell about C-14's request to review his file. At the outset, the CAS took the position that, although C-14 was entitled to information concerning him, the CAS could not disclose information about others that might be in his service file and, as a result, the CAS had to limit the information disclosed to him. An offer was extended to arrange a meeting during which the CAS would provide C-14 as complete a disclosure of his file as it could. Mr. Abell testified

that it was a long-standing practice at the CAS to release only file summaries. When C-14's lawyer requested a meeting to review C-14's file, he was advised that CAS policy was not to make files directly available to clients. Mr. Abell could not recall why he rescinded the earlier offer to allow C-14 access to his file. He explained that this access was a new practice and, although the agency eventually honoured the initial commitment to let C-14 see as much of his file as possible, the CAS was having second thoughts at this time.

In October 1994, C-14 and his lawyer visited the CAS office expecting to review the file. Mr. Abell told them it was not available. He offered to have the file reviewed by another worker and a summary prepared, but that was not acceptable to C-14 and his lawyer. In late 1994 or early 1995, the CAS changed its position and advised that it would allow C-14 to review his file, with information the CAS could not disclose redacted. A meeting took place on April 5, 1995. C-14 testified that he was not given access to his file and saw only a summarized version of it.

C-14 retained new counsel and attempted again in 1996 to obtain access to his file. Mr. Abell testified that he indicated to C-14's counsel that the CAS has already provided C-14 with an opportunity to review the file. On November 22, 1996, C-14 was provided with a photocopy of his client file, with information redacted as required.

I discuss the issue of file disclosure in further detail in another section of this chapter. In this case, it took nearly one year before C-14 was allowed to review a redacted version of his file. It took a further year or so before he was provided with a photocopy of his redacted file. This was after numerous letters written on his behalf by counsel. It is unlikely that an unrepresented individual would have been as successful. As I say in a previous section, the position of the CAS on file disclosure was not appropriate, and I reiterate the comments I made in the section regarding Cathy Sutherland's attempts to access her file.

C-14 Discloses Abuse to Project Truth

In the fall of 2000, C-14 again disclosed his abuse allegations to the OPP, this time to Project Truth. Detective Constable Ralko of the Stormont, Dundas & Glengarry OPP Detachment was assigned to investigate the allegations because the matter fell outside the mandate of Project Truth. During his investigation, Detective Constable Ralko interviewed Ken Barber and Arthur Sypes and several other potential witnesses, including other foster children of the Barbers. On May 30, 2001, Detective Constable Ralko informed C-14 that, because of a lack of corroborating evidence, he did not have reasonable and probable grounds to lay any charges.

Conclusion

C-14 made a few recommendations when he testified. He suggested that social workers should never be allowed to investigate abuse claims if they have a personal involvement in the claim nor should they be allowed to write the definitive report on them. C-14 suggested that a social worker not affiliated with the agency should be appointed to conduct an impartial assessment of allegations of abuse by foster parents and/or CAS workers. I agree with his recommendation. At the time, the CAS of SD&G had an informal practice in place to refer internal allegations to neighbouring CAS offices. It is unclear when this practice was implemented. I understand that, today, the process has been formalized and a new policy was adopted in 2001. I recommend that the policy be reviewed to ensure that the mechanics of the referral are clear and the definition of a conflict leading to a referral is well defined.

C-14 also testified about the ongoing effects of the alleged abuse. This testimony is set out in greater detail in Chapter 3, on the impact of child abuse.

Catherine Sutherland

Catherine (Cathy) Sutherland (née Donnelly) was born on June 28, 1955. She was one of five children born to Joan Donnelly.³¹ As a child, Ms Sutherland suffered extreme physical abuse by her mother, and she also alleged that she suffered sexual abuse both by her mother and by a foster father.

Growing up, Ms Sutherland spent some time at home with her mother and siblings; at other times she lived in various foster homes. The Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) first became involved with Ms Sutherland in 1957, although she was not apprehended at the time. She was brought into CAS care on April 14, 1958, and placed in a foster home. Ms Sutherland remained in CAS care until May 1960, when she was discharged from foster care and returned to her family. She was readmitted into CAS care on June 29, 1968, and remained a ward until her eighteenth birthday, on June 28, 1973.

I will comment on three issues that arose in respect to the Children's Aid Society's care of Ms Sutherland and subsequent interactions with her as an adult. The first is Ms Sutherland's allegations that the CAS failed to adequately protect her from her mother's abuse. The second issue is Ms Sutherland's allegations that she was sexually abused in a CAS foster home and that she told her worker about the abuse. The final issue involves the attempt by Ms Sutherland to obtain access to her CAS file.

31. For purposes of clarity and consistency, I will refer to Catherine Donnelly Sutherland as Catherine or Cathy Sutherland or Ms Sutherland throughout this section.

Catherine Sutherland Alleges the CAS Failed to Protect Her From Her Mother's Abuse

Catherine Sutherland felt that the CAS failed to protect her when she was a child. With respect to the physical abuse, she noted that the agency simply “monitored” the situation despite increasing evidence of neglect and abuse. When Ms Sutherland was apprehended by the CAS of SD&G in March 1958, she had suffered extensive burns to her feet caused by scalding bath water. According to the recordings of the CAS worker, a relative who was concerned that the girl's mother had burned her on purpose had contacted the agency. Upon a visit to the home, the worker was “amazed” that Ms Donnelly had not called a doctor. According to Ms Sutherland, when the doctor finally saw her, she was immediately hospitalized, and the doctors were furious about the lack of intervention. These events occurred over fifty years ago. I was able to review the file recordings but did not have the benefit of the testimony of the CAS workers involved at the time. As a result, I am unable to make a finding about Ms Sutherland's allegation that the CAS of SD&G failed to adequately protect her from her mother's abuse.

In addition to the physical abuse, Ms Sutherland alleges that she was sexually abused by her mother and that her mother would sell her to men who sexually abused her. However, it does not appear that Ms Sutherland disclosed any of this abuse to the CAS of SD&G while she was in its care.

Although Ms Sutherland may not have disclosed allegations of sexual abuse by her mother or other men, there were references in her file to sexual behaviour that perhaps should have alerted someone that there was a problem. In June 18, 1959, Ms Sutherland was living in a foster home run by Mr. and Ms Wood, and the CAS had arranged for her to have visits home with her natural family. A recording following one of those visits stated:

We learned today upon visiting Cathy and Mrs. Wood, that Cathy's last visit to her mother's home had been somewhat short of successful. She said that the child came back to her a little stranger. She elaborated on this by saying that Cathy did not act or behave normally, was not interested in her toys, and even lost her sense of balance. Cathy did not seem to hear them when they would speak to her unless they did so sharply. She would walk around the room bumping into the furniture and seemed to be in a daze. This strange behaviour lasted about three days. Previous to this visit, Cathy had been fully toilet trained, but after the visit she began to soil her clothing both during the day and at night. *She even began to masturbate.* (Emphasis added)

At the time of this recording, Cathy Sutherland was not yet four years old.

Another recording in Ms Sutherland's file in November 1967 stated that she "masturbates excessively." At the time, Ms Sutherland would have been twelve years old. Around June 1968, when Ms Sutherland was readmitted into CAS care, she was seen by a psychiatrist, who noted that she was prone to sexually acting out.

Although they could be indicators of other problems as well, these excerpts could at least suggest, in my view, that Cathy Sutherland had been sexually abused as a child and would perhaps have warranted further investigation.

Allegations of Sexual Abuse at Foster Home

In July 1968, shortly after Ms Sutherland's thirteenth birthday, she was placed in a foster home in Bainsville operated by Mr. and Ms Virgin. She alleged that she was sexually abused by the foster father, Carl Virgin, for approximately one year. Ms Sutherland testified that she told her doctor and her CAS worker, Blaine Grundy, about the abuse but that they did nothing and she remained in the home. She recalled telling her worker about the abuse while sitting in his car in the driveway of the Virgin home. According to Ms Sutherland, when she disclosed the abuse to Mr. Grundy, "he just kind of ignored" it and kept on talking. She had the impression that he did not believe her. Ms Sutherland testified that, although she cannot remember exactly what she told Blaine Grundy, she told him enough for him to know that she was being sexually abused.

Ms Sutherland explained that she told her CAS worker about the abuse because she wanted to be removed from the home. However, she was not removed until Ms Sutherland told a girl at school. She testified that she came home from school one day and the Virgins were sitting around the table. Ms Virgin was crying and the couple was furious.

Cathy Sutherland testified that she also disclosed the sexual abuse to Derry Tenger, who was her worker after Blaine Grundy and until she left CAS care, and he did not do anything either. She also said that she told the foster mother at one of the homes she subsequently resided in.

With respect to Ms Sutherland's allegation that she advised a CAS of SD&G worker of her abuse by Carl Virgin and he did not take any action, there is no recording in the file of the worker being advised of sexual abuse and, unfortunately, I do not have the benefit of the testimony of either Blaine Grundy or Derry Tenger, the two CAS workers whom Ms Sutherland alleged she told of the abuse. The absence of a notation in the file is not conclusive evidence that Ms Sutherland did not tell a CAS worker about the abuse. As I have noted elsewhere in this chapter, there was a tendency in the past to disbelieve allegations made by children. As such, her allegation may not have been recorded because she was not believed.

Catherine Sutherland Attempts to Obtain Her CAS File

Beginning in 1987, Ms Sutherland attempted to obtain information from her CAS file. It was not until the Inquiry that she was provided with unrestricted access to information about her care by the CAS. In the remainder of this section, I examine Ms Sutherland's attempts to obtain information from her CAS file and I comment on the response of the CAS of SD&G to these requests. Many former CAS wards who testified at the Inquiry spoke about difficulties in obtaining access to their files. I will make some recommendations on how this process can be improved.

Ms Sutherland's Psychologist Requests Information, 1987

On March 26, 1987, Dr. Vincent Murphy, a psychologist at the Etobicoke Centre for Children and Families, wrote the CAS of SD&G and requested a summary of its contact with Ms Sutherland's family and a copy of any medical, psychological, or psychiatric reports the CAS had completed about the family. Dr. Murphy was attempting to complete a family assessment for Ms Sutherland and her son. He enclosed a consent form signed by Ms Sutherland authorizing the release of these records. Bill Carriere, who worked for the CAS for approximately thirty-three years and held the position of director of Client Services and Protection Services prior to his retirement, testified that the agency tried to give priority to these kinds of requests.

The CAS worker assigned to deal with this request recorded that she did a thorough search of the files and concluded that the agency had never been involved with the family and therefore could not assist Dr. Murphy. Her supervisor, Mr. Carriere, testified that they had been unable to find the file. He acknowledged that this was "a complete error."

Ms Sutherland Attempts to Obtain Her File, April 1995

Ms Sutherland's first personal attempt to obtain her file was on April 8, 1995. She wanted her file for medical reasons:

... It was the first time in my life that I had actually lived alone and I was being flooded by nightmares and flashbacks. My life was just totally falling apart and I needed the file for my own medical reasons to be able to try and reconstruct my life.

She sent a letter to the CAS, providing the name of her mother, her date of birth, and the name of her last worker, Derry Tenger. She wrote, "I'm aware of the complexity of this request if nothing more than for the logistics of having the

file temporarily relocated to a [sic] this area for my perusal.” Ms Sutherland testified that she realized the CAS would not just give her the file, and she thought that, if they sent it to the local CAS office, she could read it there.

Shortly after sending this letter, Ms Sutherland spoke with CAS case worker Lise Stanley, following which she sent Ms Stanley a letter, dated April 21, 1995, providing some identification the agency had requested. The letter also indicated that Ms Stanley had requested that Ms Sutherland highlight the information she was looking for. Ms Sutherland responded:

As I pointed out in our conversation, I have had a great deal of difficulty remembering certain aspects of my childhood and it is therefore difficult to pinpoint specific times and episodes. In essence, that is why I am trying to obtain the file.

In my opinion, this exchange highlights the difficulty faced by those seeking access to information about their childhood. The CAS of SD&G requested that Ms Sutherland specify the information she was seeking from her file, but, without access to her file, Ms Sutherland could not know what information she was seeking. CAS staff who are responsible for responding to requests for information must be cognizant of the fact that individuals seeking the information may not know exactly what they are looking for or what they expect to receive.

Another letter from Ms Sutherland to Lise Stanley, dated June 28, 1995, referred to a further conversation between the two women on June 20, 1995, during which Ms Stanley advised Ms Sutherland that she should indicate in writing that she was seeking all available medical information that was contained in her files.

Ms Sutherland testified that this was “ludicrous.” She had already provided identification and, when she asked for medical information, the CAS requested that she write a letter specifically asking for medical information. Ms Sutherland testified that she complied and made a written request for her medical records and was then told that the CAS could not release them because they were third-party records.

Cathy Sutherland was learning that she was not going to get her file, but she felt that the CAS could have provided her with more information to help fill in the gaps in her memory.

Ms Sutherland did request some specific information in addition to requesting disclosure of her entire file. Mark Boisvenue, a CAS investigator, noted that, during a telephone call with Ms Sutherland on August 16, 1995, she requested information regarding why she was returned to her family, given the abusive situation, and she wanted to know if there was any information related to sexual

abuse by her foster parent, Carl Virgin. Ms Sutherland testified that she wanted to know why nobody did anything and why she was left in the foster home after disclosing the abuse to her worker.

Several days after this telephone call, Ms Sutherland received a letter from Mark Boisvenue and Bill Carriere, dated August 22, 1995, which enclosed a summary of her involvement with the CAS. This was the first disclosure that Ms Sutherland received from the agency. Bill Carriere explained that Mark Boisvenue was an investigator and he was tasked with trying to get information to Ms Sutherland quicker than if it was left with someone in the intake department. Mr. Carriere was Mr. Boisvenue's supervisor. Although Mr. Carriere's name is on the letter, it appears that Mr. Abell signed the letter for him, and Mr. Carriere did not know whether he saw what was provided to Ms Sutherland.

The cover letter advised that "due to confidentiality," the CAS could not provide any specific details involving individuals other than Ms Sutherland. Bill Carriere testified that this reference to confidentiality was not a reference to a specific policy, as there was no such policy in place. Rather, Mr. Boisvenue was referring to a practice of the CAS of not disclosing information about other individuals.

The letter also stated that the agency was unable to find any information within her files indicating sexual abuse, and it encouraged Ms Sutherland to file a complaint with the police if she believed an offence had been committed.

The summary enclosed with the letter consisted of a chronology of Ms Sutherland's wardship and her placement history, a brief overview of her medical history, and a social history. The summary was four pages long. The CAS of SD&G had been involved with Ms Sutherland and her family for a period of sixteen years.

Mr. Carriere testified that Mr. Boisvenue could view any materials relating to Ms Sutherland to which the agency had access, including her family file, her child file, and her birth parents' file. He also had access to the file on the Virgin foster home. However, it was not expected that he would have accessed all of these files when writing the summary. Mr. Carriere thought that, in most cases, when a ward asks for background information, the majority of the information would come from the child file. He agreed, however, that, if Mr. Boisvenue did look at the family file in preparing the summary, any relevant information he saw in that file that could be provided to Ms Sutherland should have been included in the summary.

As noted above, Mr. Boisvenue wrote to Ms Sutherland that he had been unable to find any information in her files that would indicate that she had been sexually abused. There was no reference to the entries referring to Ms Sutherland beginning to masturbate shortly before her fourth birthday and

subsequent entries about excessive masturbation. Mr. Carriere disagreed with the suggestion that, in 1995, a social worker reading these entries would have been alerted to the possibility of sexual abuse. While these observations are clearly not proof of any abuse, they indicated, in my opinion, the existence of some issues, particularly the entry pertaining to masturbation as a young child. Not only should this have been explored by the CAS at the time, but Mr. Boisvenue should have provided Ms Sutherland with this information.

Regarding the incident in which Ms Sutherland's feet were badly burned when she was two years old, the summary prepared by Mr. Boisvenue stated that a family member indicated that the burns were the result of being exposed to scalding water in a bathtub. An entry in Ms Sutherland's child file stated:

It was later learned that the burns were caused by hot water in the tub, but it was not clearly established whether the child turned on the tap herself or whether the mother may have caused it deliberately.

The family file, which Mr. Boisvenue also had access to, included the following entry:

She had also suffered third-degree burns from negligence on her mother's part, and there was evidence from her mother's relatives and her local family doctor to substantiate the fact that these accidents were not really accidents.

Ms Sutherland was not advised that the CAS knew that there was the possibility that the burns were inflicted deliberately by her mother. In my opinion, this information should have been provided. It is clearly a part of Ms Sutherland's history and in fact is related to her specific request for information about why she was returned to her mother's home despite the abuse.

Bill Carriere testified that he did not know why the summary failed to provide details contained in the file that might have answered some questions for Ms Sutherland. He acknowledged that the summary was very different from what was contained in the file. Mr. Carriere disagreed that the agency was being paternalistic and trying to protect Ms Sutherland from negative information. Rather, he thought Mr. Boisvenue did not have a lot of time to complete the summary and therefore was not able to give proper attention to the file review and the preparation of the summary.

I will provide further comments on and recommendations to improve client access to files for former wards. I note that the practice of providing summaries

of a file is time consuming and not very effective. To provide an accurate summary, the CAS worker must review the entire file, which in some cases can be very lengthy. It is inevitable that information will be missed or, more importantly, the interpretation of the recordings may be inaccurate if the information is taken out of its original context. I appreciate that the CAS is concerned about the privacy interests of other individuals mentioned in the file, such as other former wards. In my opinion, providing a copy of the file with confidential information pertaining to other people redacted is a more efficient way of providing the information requested, if the redactions are not excessive.

Ms Sutherland Responds to the CAS, March 1996

On March 28, 1996, Ms Sutherland wrote a lengthy letter to Mark Boisvenue in response to the letter and summary she received from him the previous August. In this letter, she questioned the CAS's action—or, more accurately, inaction—with respect to her treatment by her mother, and she described a number of alleged acts of abuse.

At the conclusion of the letter, Mr. Sutherland wrote:

When I look back at my childhood, it is nothing more than a series of disjointed snapshots and I have no access to pictures, report cards, babybooks, toys or anything else that would enhance such a connection. I have no idea what I looked like before I was 14 and short of the various statements in your letter, I have little idea of the kind of child I was. But, one of the greatest difficulties I have had, has been trying to find a way to convey the importance of retrieving those lost memories. For many people, actively searching out what trauma has suppressed just does not appear reasonable but they are the same ones who visit their relatives and surround themselves with vintage artifacts from their past. Good, bad or indifferent I need the facts if I'm to ever really know who I am and it is with that starving need for knowledge that I beg your continued support and assistance.

She also requested contact information for a foster family with whom she had been placed in Mountain. She felt strongly that they had “provided the birthplace for the positive facets of my personality.” She expressed a desire to write to them.

The comments by Ms Sutherland in this letter illustrate that the issue for former CAS wards is not simply a desire to see their file but a desire to understand who they were as children and to have some memories of their childhood. Many

of us would have difficulty remembering much about our childhood if it were not for photographs, mementos, and stories from our parents and relatives. Children like Ms Sutherland were denied those linkages, and their CAS file is often the only source of information about their past. I understand from the evidence of Mr. MacLean that foster parents are now required to keep life books, which the child can keep. Although this does not address the file disclosure issue per se, I think it is an excellent initiative.

This letter by Ms Sutherland also raises the issue of the disclosure of the names of foster parents. It appears that the practice of the CAS of SD&G at the time was to not provide former wards with the names of foster parents with whom they had been placed. Although Bill Carriere could not point to any written policy or law prohibiting the CAS from telling a former ward the name of her foster parents or the names of workers in receiving homes, he testified that it was an understanding between the agency and foster parents that their names would not be shared as part of records disclosure unless the foster parents agreed.

For some children, foster parents play a crucial role in their growth and development. In my view, to deny them access to even the names of these individuals is not acceptable. Mr. Carriere alluded to the potential problems that could be caused for foster parents who had a difficult relationship with a child in their care if the child, now an adult, is given their identifying information.

Ian MacLean recommended that the Ministry of Community and Social Services require Children's Aid Societies to release to all Crown wards leaving their care the following information: a record of their updated social history; their full medical history; the contact information for mental health professionals who have done tests and produced reports for them along with information on how to obtain those reports and test results; a full list of schools attended, with the names of teachers, the grades completed, and copies of report cards; a list of the foster homes where they lived, including the dates and placements and the names of the foster family members living with them in the home; and a list of churches, clubs, and so on, attended and any certificates received from these organizations. A sign-off by a parent or guardian or the youth him- or herself would be required prior to authorizing the release of the information. A full copy of the material, including the sign-off, would be kept by the CAS at the front of the child's file and would be immediately available to the individual if requested in later years. I agree with and support this recommendation.

Having received no response to her March letter, Ms Sutherland wrote to Mr. Boisvenue against on June 10, 1996. She received a letter dated October 1, 1996, advising her that her file would be reviewed by a second social worker and that the CAS required time to go through that process.

The Ministry of Community and Social Services Becomes Involved

In late December 1996 or early January 1997, Ms Sutherland spoke to Wenda Hodsdon, the program supervisor for the Ministry of Community and Social Services. She asked Ms Hodsdon for assistance in retrieving her CAS files.

Following this call, Ms Hodsdon contacted Bill Carriere, on January 2, 1997. At the time, he was either the clinical director or the director of Client Services. She asked him if the CAS had a specific policy about the time frame for responding to requests for information. He responded that there was no such policy. Mr. Carriere testified that he was concerned about having sufficient staff to deal with protection matters, let alone information disclosure. He agreed, however, that Ms Sutherland was not being dealt with in a timely fashion and that it was understandable that she contacted the Ministry.

As a result of this call from the Ministry, Mr. Carriere contacted the supervisor of the workers on the file to determine what was happening with Ms Sutherland's request.

Ms Sutherland Contacts the CAS Executive Director

On January 13, 1997, Ms Sutherland wrote a letter to the CAS executive director, Richard Abell, outlining the chronology of her attempts to obtain her file. She asked to be provided access to her file within two weeks. Mr. Abell responded in a letter dated February 11, 1997. He advised her that arrangements were being made to give her access to her file through the Hamilton CAS. According to Ms Sutherland, this was the first time there was any discussion about giving her access to her file.

In this letter, Mr. Abell also responded to some of the questions Ms Sutherland raised in her March 1996 letter to Mark Boisvenue.

Ms Sutherland Attends at Hamilton CAS to Review Her File, March 1997

Ms Sutherland received another letter from Mr. Abell, dated February 25, 1997, outlining the arrangement for her to view her file at the Hamilton CAS office. She was advised that Patricia Garrahan would have three to four hours to spend with Ms Sutherland to review her file. She was told that the CAS was obligated to black out identifying information such as names of foster families, society workers, and other professionals mentioned in the file. In addition, the CAS could not disclose any documents it did not author, such as medical reports. Ms Sutherland was advised to contact her family physician, who could arrange to obtain her medical records from the Cornwall General Hospital. Mr. Abell explained that the CAS was not permitted to release medical reports but

was required to inform people if they had such a report and tell them where it originated from.

Finally, Ms Sutherland was told that information that might be upsetting to her would also be blacked out, but that Ms Garrahan would provide the information if requested. Ms Sutherland felt that it was her history and it was not up to the CAS to decide what she could or could not see.

The meeting at the Hamilton CAS took place on or around March 10, 1997. Ms Sutherland was given a redacted file to review, which was missing the first seven pages. According to Ms Sutherland, she was given a limited time to read the information. She was not allowed to photocopy it, but she read it into a dictaphone. She felt rushed: "I mean, it was the best I had up to that point, but it certainly wasn't complete and it certainly didn't answer all the questions."

Ms Sutherland said there was no explanation given for why the seven pages were missing and she did not have time to ask Ms Garrahan where they were. According to Ms Sutherland, she was not able to ask Ms Garrahan any questions during this meeting; it took the whole time just to dictate the file, as it was not very legible. It was difficult to decipher the bad photocopies. Notes prepared by Ms Garrahan of her meeting with Ms Sutherland indicate that Ms Sutherland was advised that four of the missing pages contained identifying information and that the remaining pages were either lost or not photocopied. I have viewed Ms Sutherland's child file. The first seven pages include a lot of information about the situation in her home leading up to her apprehension by the CAS. They contain no more or less identifying information than the remainder of the file. I am of the view that they should have been provided to Ms Sutherland to review.

Richard Abell testified that the arrangements to have Ms Sutherland review her file with Patricia Garrahan went beyond the normal CAS practice. Although an improvement over the file summary prepared nearly two years earlier, this was clearly not a satisfactory method of providing Ms Sutherland access to her file. She was given an incomplete, difficult to read copy of her file and a limited amount of time to review it. It is obvious that the agency at this point was trying to figure out a way to provide Ms Sutherland with the information in her file without actually giving her the file. The CAS of SD&G may have been trying to improve the process, but, in my opinion, it still did not get it right.

Later that year, Ms Sutherland sent a letter, dated November 7, 1997, to Richard Abell, asking about a hospital record, which was part of the agency's files. She wrote that someone from the hospital had contacted the CAS and given

it permission for the record to be disclosed to Ms Sutherland. According to Ms Sutherland, she never received a response to this letter.

Ms Sutherland's Psychiatrist Requests File Disclosure

In the fall of 1998, Ms Sutherland was seeing a psychiatrist, Dr. Cornfield. He thought it would be beneficial if he obtained a copy of her CAS file. Ms Sutherland signed a consent form pursuant to the *Mental Health Act*,³² which was provided to the CAS of SD&G on or about September 8, 1998. According to Ms Sutherland, the agency would not give him the file and told him to read the copy that Ms Sutherland had dictated and typed herself.

Internal CAS documents show that intake worker Carole Leblanc received the request for record disclosure from Dr. Cornfield on behalf of Catherine Sutherland. According to Ms Leblanc, Dr. Cornfield did not identify what details he wanted. He just said he was looking for information from her file as a child. Ms Leblanc spoke to Dr. Cornfield on October 6, 1998, in an attempt to get more information about his request. Ms Leblanc testified that the file was extensive and she wanted to narrow down the request. She said Dr. Cornfield was not able to provide any further detail and she had no further contact with him after this telephone call. It appears that on November 23, 1998, the matter was being transferred to the Family Services Department. Ms Leblanc testified that records disclosure was a large undertaking and there was a backlog at the time. There were only three intake workers, who were not able to complete all of the records disclosure requests. She was not able to attend to this file at the time. Ms Leblanc had no further involvement with the file after it was transferred.

On or about November 27, 1998, Bill Carriere wrote a letter to Dr. Cornfield, advising him that Ms Sutherland had been permitted to review and dictate portions of her file on March 10, 1997, and directing him to obtain a copy of the summary Ms Sutherland had dictated.

In my opinion, this was an inappropriate way to deal with a request from a medical professional. Underlying this approach is an assumption that Ms Sutherland had maintained a copy of what she had dictated and that she had dictated the entire unredacted portion of the file. The CAS could be assured of neither of these things. If a doctor requests a file for the purpose of treating a patient, the CAS should provide a copy of the file, with personal information about third parties redacted if that is deemed necessary.

32. R.S.O. 1990, c. M.7.

Ms Sutherland Writes to Politicians for Assistance

On December 10, 1998, Cathy Sutherland wrote the Minister of Justice and Attorney General of Canada, Anne McLellan, requesting her assistance. Ms McLellan responded, saying she was not at liberty to give members of the public legal advice. She suggested, however, that Ms Sutherland contact the Minister of Community and Social Services, which she did by way of a letter dated April 8, 1999. In this letter to the Honourable Janet Ecker, Ms Sutherland provided a summary of her involvement with the CAS and requested her assistance in obtaining her file from the CAS. Ms Ecker responded in a letter dated May 4, 1999. She provided Ms Sutherland with a pamphlet outlining the complaint procedure for the CAS of SD&G and encouraged her to contact area manager Pierre Lalonde if she had any difficulty.

Ms Sutherland Takes Her Concerns up the CAS Chain

Ms Sutherland took the advice she received from Minister Ecker and wrote a letter, dated May 17, 1999, to Pierre Lalonde. Among other things, she alluded to sexual abuse by her mother and wrote about the sexual abuse she alleged had occurred at the Virgin foster home. In June 1999, Ms Sutherland was advised by Mr. Lalonde that the next step in the process was to request a meeting with the Board of Directors.

Ms Sutherland made such a request in a letter dated June 8, 1999, addressed to Jeanette Scrimshaw, the president of the CAS Board of Directors. Ms Sutherland hoped that this meeting would lead to her being granted access to her file. She received a response from Ms Scrimshaw a couple of weeks later advising her that the matter would be referred to Mr. Carriere and that the complaint sub-committee of the Board would be available to her if she wished.

Ms Sutherland Is Provided With a Redacted Copy of Her File

On July 13, 1999, Ms Sutherland's file was copied and third-party names, addresses, and information about third parties were blacked out. Bill Carriere testified that a decision must have been made to provide as much information to Ms Sutherland as possible without needing to ask her for any further details.

Ms Sutherland was provided with the redacted copy of her file in August 1999. The cover letter, dated August 12, 1999, stated that the information contained within was everything the CAS thought she was entitled to view. The letter provided a coding system for the redactions, with certain numbers indicating the reason for certain information being redacted.

Ms Sutherland testified that most of the file was blacked out and it did not look much different from the one she had been permitted to view in Hamilton. She was

still not satisfied and thought she was entitled to see everything in her file. There were also no medical reports in her file despite the fact that, according to Ms Sutherland, the hospital had given the CAS permission to release the medical reports to her. The only medical information Ms Sutherland received was the summary prepared by Mr. Boisvenue in August 1995.

Another Request by Dr. Cornfield, 2006

Richard Abell received a letter dated January 27, 2006, from Dr. Cornfield, who advised him that Ms Sutherland would be appearing before the Criminal Injuries Compensation Board soon and that he was seeking records to assist in this application. Having received no response, Dr. Cornfield wrote a follow-up letter dated March 16, 2006. In June 2006, Dr. Cornfield received a copy of the family file with all information pertaining to individuals other than Cathy Sutherland blacked out.

Conclusions About File Access

I have two concerns regarding Ms Sutherland's journey to obtain her CAS file: first, the extent of the access she was granted and, second, the delays. With respect to the first issue, I previously commented that summaries were both an inefficient and ineffective way to provide a former ward with information from his or her file. It appears, at least in some of the cases looked at during the Inquiry, that the CAS has moved away from this practice of providing only summaries and will provide a former ward a copy of the file with certain information blacked out. The question then becomes whether it is necessary or appropriate for the CAS to black out any information or whether the former ward should simply be given his or her entire file. Bill Carriere testified that the CAS cannot release the entire file because often there is information in it concerning other people that the person requesting the file is not entitled to. He explained that CAS files typically have a lot of information that would be considered highly personal. People reveal information that they would not want disclosed.

I appreciate this concern and accept that, if the entire file is to be released to a former ward, certain information may have to be redacted. I do not agree with the redaction of the names of foster parents, CAS workers, or even other wards who resided in a particular foster home. These are all individuals who, to varying degrees, played a significant role in a foster child's life and that child has the right to know the identity of these individuals. Although I think the names of other wards who, for example, resided in a particular foster home should be shared, I agree that personal information about those children and their particular circumstances should be redacted to protect their privacy interests.

I reiterate that I agree with the recommendation of Ian MacLean, discussed earlier, that the CAS be required to compile particular information about children in CAS care, including information about placements, schools attended, and teachers, to provide to those individuals in the future. If an individual still requests access to his or her file, it should be provided, subject to the redactions discussed above.

Once a determination is made on what material can be disclosed, the next issue is how quickly can or should this be done. In Ms Sutherland's case, it took twelve years. Both Bill Carriere and Richard Abell agreed that this was too long. Mr. Abell testified that, in the case of Ms Sutherland, the CAS of SD&G was "breaking new ground" with respect to disclosure. The CAS was going further than it ever had in terms of records disclosure; however, Mr. Abell acknowledged that, from Ms Sutherland's perspective, it was like "pulling teeth." It is clear that the CAS must do better than it did with Ms Sutherland. I appreciate that resources are an issue and understand that this issue is now being addressed. Previously, file disclosure requests were handled by the intake department, in addition to its many other tasks. Mr. Carriere commented that he did not have enough staff to deal with child protection issues, let alone disclosure requests. It is apparent that the same resources being used for child protection and child placement issues cannot also be used for records disclosure requests because inevitably the latter will be a second priority. Mr. MacLean testified that the CAS of SD&G recently hired a full-time worker to deal with record disclosure requests. He explained that currently the agency receives twenty to thirty requests per month and there are fifty-five outstanding requests. A second worker has been hired for a six-month period to handle the backlog of requests.

Although I found that the CAS was too slow in responding to Ms Sutherland and often did not provide her with information to which I think she was entitled, correspondence sent to Ms Sutherland was, for the most part, courteous, and my impression from the CAS witnesses who testified at the Inquiry is that there was a genuine concern to assist her. I am hopeful that the changes testified about by Mr. MacLean coupled with the implementation of a clear direction about the type of information that should be disclosed will ensure that, in the future, former wards of the CAS will receive adequate disclosure in a timely fashion.

Involvement With Police Forces

Beginning in the mid-1990s, Ms Sutherland had interactions with several police forces regarding her allegations of physical and sexual abuse. I do not intend to explore these in depth but will refer to them as they are part of Ms Sutherland's history.

Hamilton-Wentworth Police

In November 1996, Ms Sutherland called the Hamilton-Wentworth police to report historical child sexual abuse and provided a written statement. The police asked for more details about the sexual abuse by Carl Virgin, which she provided. However, when they asked for more specifics, Ms Sutherland testified that she “couldn’t handle it” and she asked them to put the investigation on hold.

The Ontario Provincial Police

In August 1997, the Hamilton-Wentworth police sent a letter to the Morrisburg OPP advising them that, in November 1996, Ms Sutherland had contacted them to report child abuse at the hands of her mother and sexual abuse by Carl Virgin in a foster home. The OPP was further advised that, in January 1997, Ms Sutherland asked for the investigation to put on hold but that she had recently advised that, although she did not want to deal with the sexual abuse allegations, she wanted to continue with the child abuse investigation.

An investigation was conducted by Detective Constable John Ralko of the Stormont, Dundas, and Glengarry OPP and Constable Shawn White of the Cornwall Police Service into the death of Ms Sutherland’s infant brother, the burning of her feet when she was two years old, and the mistreatment by her mother. In a letter dated March 26, 1997, Detective Constable Ralko summarized his investigation and advised Ms Sutherland that no charges would be laid, as the officer had been unable to locate any witnesses or documentary evidence to corroborate her allegations.

I have provided my findings and recommendations regarding file disclosure. I have not touched upon the matter of counselling in this section. It is covered in other sections of this chapter. Ms Sutherland recommended that wards of the CAS should be offered counselling and that the offer should remain open even if it is initially turned down. She testified that she was never offered counselling while in care. This is an issue that has arisen with many of the witnesses at the Inquiry who were former wards of the CAS.

Allegations Against Jean Luc Leblanc

In 1986, Jean Luc Leblanc was convicted of gross indecency relating to the sexual abuse of young boys. The Cornwall Police Service (CPS) and the Children’s Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G) had been engaged in a joint investigation of the allegations giving rise to the charges against Mr. Leblanc. In 1994, 1995, 1998, and 1999, further information came to the attention of the CAS of SD&G regarding Mr. Leblanc.

The Children's Aid Society Is Notified of Allegations, 1986

In early January 1986, Jason Tyo decided to tell someone that Jean Luc Leblanc was sexually abusing him. He testified that he called the after-hours emergency number for the Children's Aid Society. He spoke to a woman and told her that he was tired of being physically abused at his home and sexually abused outside of his home. The call lasted less than five minutes. He could not remember if, during the call, he revealed who was sexually abusing him. In his view, the woman he spoke to was not sympathetic. At the time, because he had called the number of the CAS on York Street in Cornwall, he assumed he had been speaking to someone at that office. He acknowledged, however, that he may have been speaking to someone on the telephone answering service, and not with a worker from the CAS. Mr. Tyo testified that he had no recollection of the CAS calling him back the night of this call, but he thought someone from the agency called back a couple of weeks later. When someone from the CAS did call Mr. Tyo back, he said that he had already told his teacher and that the allegation was being dealt with. Mr. Tyo testified that he had not been happy with the response he had received from the CAS to his original call, and that he had cried out for help and received no response. He lost all hope with respect to the CAS. Instead, he went to see a former teacher, Dawn Raymond, about Mr. Leblanc. Mr. Tyo's disclosure of abuse to his teacher is also discussed in Chapter 10, on the institutional response of school boards.

On January 24, 1986, Lorne Lawson, the superintendent of the County Board of Education, a predecessor of the Upper Canada District School Board, contacted the CAS of SD&G and requested that a worker come to his office to discuss a sexual abuse case. Bruce Duncan was the intake worker at the CAS when the call was received. Mr. Lawson would not supply any names during the call. He told Mr. Duncan that he was confident that the CAS was not involved with the family.

Bill Carriere was Mr. Duncan's supervisor. Mr. Carriere testified that, in instances where sexual abuse was alleged, especially against people in positions of trust, his workers would come to him almost immediately, and there would be frequent communications. Mr. Duncan discussed the January 24, 1986, intake with him.

Shortly after receiving the call, Mr. Duncan met with Mr. Lawson and Dawn Raymond, a teacher, at the School Board offices. He was informed that Jason Tyo, a former student of Ms Raymond's, had disclosed to her that Jean Luc Leblanc was sexually abusing Scott Burgess, who was also a former student of Ms Raymond's. Jason Tyo did not disclose to Ms Raymond that he was also being abused by Mr. Leblanc. After teaching Scott Burgess and Jason Tyo at Gladstone Public School, Ms Raymond had become "more of a friend" to them:

they visited her home, and she was someone in whom they would confide. After Mr. Tyo's disclosure, Ms Raymond had met with Scott Burgess, who confirmed that he was being abused by Mr. Leblanc. Mr. Burgess did not want his mother to know about the alleged abuse because he was afraid of her.

After meeting with Mr. Lawson and Ms Raymond, Mr. Duncan called Angelo Towndale, director of services at the CAS of SD&G, and the Cornwall Police Service. When speaking to the CPS, he was advised that Constable Brian Payment would attend at the school. As I discussed in Chapter 6, on the institutional response of the Cornwall Police Service, Constable Payment was told that the school would not allow him to speak to Scott Burgess without the consent of his parents. Mr. Duncan recorded in his notes that the school said they could not allow the police in without a warrant. The school did, however, permit Mr. Duncan to meet with Mr. Burgess.

I note that the Child Protection Protocol of 2001 addresses comprehensively the issue of the location of the interview of a child reporting abuse to someone in a school setting. It also addresses the issue of when to provide notice to the parents and when to proceed with an interview without the parents' consent. Ultimately it is always a question of judgment, and I agree with the protocol that the "best interest" of the child is paramount. In this situation, however, not permitting Constable Payment to speak to Scott Burgess had the practical effect of increasing the number of times that the young person was interviewed. The 2001 protocol provides that, if a principal is denying access to the child, the police/CAS team should follow the chain of command and may communicate with the area superintendent.

The First CAS Interview of Scott Burgess

Later in the afternoon on January 24, Mr. Duncan interviewed Scott Burgess at Central Public School about the allegations against Mr. Leblanc. Ms Raymond was present for the interview. She testified that Mr. Duncan made her ask the questions because Scott would relate better to her. She also testified that Mr. Duncan sat behind her taking notes and that he would slip her questions he wanted her to ask.

During the interview with Mr. Duncan, Scott Burgess described allegations of abuse against Mr. Leblanc. He also described alleged abuse by Mr. Leblanc against his brother, Jody Burgess, and Jason Tyo. He also provided the names of a few other young people.

After the interview, Mr. Duncan called Angelo Towndale. Mr. Duncan recorded in his notes that he would take Scott Burgess home and talk to his parents. Shortly thereafter, he spoke to Constable Brian Payment. He recorded in his notes "go to parents and see if Scott will talk" to the CPS.

The Burgess Home Visit

At 5:00 p.m., Mr. Duncan arrived at the Burgess home. There were seven children in the Burgess family, three of whom had left home by this time. Mr. and Ms Burgess were informed of what their son, Scott, had disclosed about Mr. Leblanc. They were shocked and reported that one of their older sons had been molested and that one of their daughters had been sexually assaulted. Mr. Duncan's notes of that visit appear to indicate that he interviewed Jody Burgess, who said that Mr. Leblanc was his "friend." He did not disclose that Mr. Leblanc had sexually abused him. Jody Burgess also reported allegations that Bill McKinnon had sexually abused Jason Tyo and others and that Mr. McKinnon had pictures of "many little kids."

Mr. Duncan interviewed Scott Burgess a second time while at his home. During this interview, Scott Burgess further discussed allegations of abuse against Mr. Leblanc. He agreed to be interviewed by the CPS.

CAS Fails to Interview Any Other Burgess Children

None of the other Burgess children were interviewed by Bruce Duncan during this home visit or at any time later. As is discussed in Chapter 6, on the institutional response of the Cornwall Police Service, the CPS also failed to interview any of the other Burgess children. While Scott and Jody Burgess had identified other young people and children as being alleged victims, they had not identified their siblings. Years later, as a result of the Ontario Provincial Police (OPP) investigation of Jean Luc Leblanc in 1999, it was determined that Cindy Burgess, the sister of Scott and Jody, had also been sexually abused by Mr. Leblanc. Had she been interviewed in 1986, this could have been determined. Scott Burgess testified that he knew in 1986 that his sister was being abused by Mr. Leblanc. Had someone asked him in 1986, "Has your sister, Cindy, ever been abused?," he would have told them.

In his testimony, Mr. Carriere acknowledged that, knowing what he knows now, it would have been a good idea to interview the other siblings. In particular, he expressed regret that Cindy Burgess was not interviewed. Mr. Carriere noted that the current standard requires all children in the family to be interviewed. If a family member is not being interviewed, an explanation must be included in the file. I agree with Mr. Carriere that all of the Burgess children should have been interviewed. Information received from such interviews, particularly of Cindy Burgess, would have furthered the criminal investigation and prosecution and, importantly, would have furthered the ultimate purpose of the CAS, the protection of children.

Further Interviews

Constable Payment interviewed Scott Burgess at the CAS offices on the evening of January 24, 1986. Mr. Duncan was present, as was Ms Raymond. Statements were taken from both Scott Burgess and Ms Raymond.

By this point, Scott Burgess had been interviewed three times that day. Mr. Carriere testified that he did not believe that there was a policy in place regarding how many interviews were appropriate for a child victim of sexual abuse. In his view, it is best to try to do as few interviews as possible because of the possibility of re-victimization. I agree with Mr. Carriere and acknowledge that victims often disclose the circumstances of abuse in incremental disclosure. This may necessitate a number of interviews. It is therefore all the more important to limit the number of interviews that are within your control. As I indicate in Chapter 6, the CAS and the CPS ought to have conducted joint interviews with all child victims to minimize the number of interviews and the trauma to the children.

On January 25, 1986, Constable Payment interviewed Jody Burgess and Jason Tyo. Mr. Duncan was not present at these interviews. On January 27, 1986, charges of gross indecency were laid against Mr. Leblanc with respect to the sexual abuse of Scott and Jody Burgess and Jason Tyo. Mr. Leblanc pleaded guilty to two out of the three charges. The arrest and prosecution of Mr. Leblanc is discussed in Chapter 6 and in Chapter 11, on the institutional response of the Ministry of the Attorney General.

The CAS took appropriate steps to report Mr. Leblanc to the Child Abuse Register.

Ongoing CAS Involvement With the Burgess and Tyo Families Related to Allegations Against Mr. Leblanc

It was not until January 31, 1986, that Mr. Duncan contacted Jason Tyo's family and set up an appointment for a home visit, which was held on February 3, 1986. Mr. Carriere testified that he did not know why there was this delay.

Although Mr. Carriere testified that he did not remember this meeting, the case notes indicate that, on February 4, 1986, Mr. Duncan and Mr. Carriere met to discuss the file. Based upon comments Jason Tyo had made to Mr. Duncan and Constable Payment, there was some concern that Mr. Tyo might become a potential abuser in the future. When asked about this at the Inquiry, Jason Tyo said that this was something that should have been acted upon. Mr. Carriere testified that a plan was developed to try to get Jason Tyo to accept counselling. The case notes include references to counselling for Mr. Tyo and a referral to a sexual abuse treatment group. The notes also indicate that he never attended any

counselling sessions. CAS documents indicate that Jason Tyo, at the age of fifteen, said he did not need counselling. He and his parents also felt it was not necessary that they be involved in the Family Action Program. Jason Tyo testified that he did not recall any discussions about counselling with the CAS or his mother.

On April 2, 1986, Jason Tyo's file was transferred to another CAS worker, Pina DeBellis. After this point, Mr. Carriere was no longer responsible for supervising this file. The file was closed on June 8, 1987.

Jason Tyo testified that, as a result of the abuse he suffered, he went on to abuse other people, has been in trouble with the law, has used drugs and alcohol, and has experienced depression and anxiety. He testified that he was disappointed with the CAS response to his situation. He noted that the decision to go to counselling is an adult decision that is difficult to make as a young person. In his view, people did not do enough to push him toward counselling and, if the CAS had encouraged him to go to counselling, he would not have abused. He acknowledged that he does not remember much of the contacts with the CAS but said there should have been stronger intervention. Mr. Carriere testified about his concerns regarding "forcing" someone into counselling and stated that the only way to "force" Jason Tyo into counselling would have been to obtain a court order that he was a child in need of protection. He didn't know if this would have been successful.

Both Scott and Jody Burgess testified that they did not remember any offers of counselling from the CAS in 1986. However, the CAS notes outline attempts to arrange counselling for them.

It is not surprising that Scott and Jody Burgess and Jason Tyo do not remember discussions about counselling options presented by the CAS or other institutions. The events that placed them in contact with the agency occurred some time ago, when they were young people going through what would undoubtedly have been a difficult time. While I agree with Mr. Carriere that forcing someone to attend counselling may be ineffective, or even counterproductive, I believe every effort should be made to encourage child victims of sexual abuse to attend counselling.

Bill McKinnon

When interviewed by Mr. Duncan on January 24, 1986, Jody Burgess alleged that Bill McKinnon had sexually abused Jason Tyo and others, and that Mr. McKinnon had pictures of young children. Scott Burgess testified at the Inquiry that he had also been abused by "Billy." He testified that no one had ever asked him if he had been abused by "Billy."

Mr. Duncan's notes include a reference to a discussion between Mr. Duncan and Constable Payment about "Billie." Specifically, the notes say: "Billie is so senile we may not get anywhere with him—he was very scared and was told they would watch his house." Constable Payment testified that, when this matter was discussed with Crown Attorney Don Johnson, Mr. Johnson raised a concern about Mr. McKinnon's competency to stand trial. Mr. McKinnon was seventy-one years old. The CPS did not investigate this matter further, and no charges were laid against Mr. McKinnon.

Mr. Carriere testified that he did not believe that Mr. McKinnon was investigated at all and agreed that this matter should have been followed up. He also noted: "I think if [someone is] senile and abusing, the likelihood of them stopping is not very great."

I am of the view that further steps should have been taken by the CAS of SD&G and particularly Mr. Duncan to investigate the allegations made by Jody Burgess about Bill McKinnon. While the CPS may make its own decisions about whether or not to investigate and lay charges, the CAS need not rely on that assessment to determine whether it should conduct its own investigation directed towards the protection of children. A thorough investigation should have been conducted to determine whether allegations against Bill McKinnon were within the mandate of the CAS of SD&G.

The CAS Gets Information About "Jean Luc" From a School Principal

On October 21, 1994, CAS worker Françoise Lepage received a call from Tannis Girard, a principal at St. Mary's School. Ms Girard was concerned about a student in grade 4 who was spending a lot of time with a fifty-four-year-old man by the name of "Jean Luc" who was buying him gifts, such as a dirt bike, gloves, and a helmet, and paying him money for carrying empty beer bottles. Ms Girard had addressed the issue with the student's mother, who noted that her son had spent the weekend at Jean Luc's cabin. The student had reported that another man and his daughter were there when he stayed the night. Ms Girard reported that the student's mother did not seem concerned.

The initial risk assessment by the worker was rated as low or nil. The decision under the preliminary inquiry was that there were no grounds to pursue further, and the complaint was not accepted for service. Mr. Carriere testified that he did not know what, if any, attempts were made to find out Jean Luc's last name. Jean Luc Leblanc would have been known to the agency as a convicted sex offender. Mr. Carriere further testified that there was a policy at this time that required the CAS to check the Child Abuse Register or see if there was a prior history when allegations of abuse were made.

The notes of Françoise Lepage indicate that, on October 24, 1994, she discussed the matter with Mr. Carriere because her own supervisor was absent. According to Ms Lepage's notes, she then decided she could wait to discuss the matter with her own supervisor. Mr. Carriere testified that he did not remember the discussion but noted that he was involved in the Jean Luc Leblanc matter in 1986.

After meeting with her supervisor, Ms Lepage met with the student's mother and stepfather. The home was impoverished and in desperate financial straits. The mother said that they were very vigilant with regard to the relationship between her son and "Jean Luc," and noted that her son had never disclosed any inappropriate behaviour on Jean Luc's part. The mother refused to provide Jean Luc's last name because "he was not accused." She also said that Jean Luc had lots of money and gave gifts to lots of children. When asked about this, Mr. Carriere testified that this could raise a red flag. Looking at the matter in hindsight, Mr. Carriere stated the following:

Sometimes we're faced in Child Welfare with situations that I would describe as being worrisome but you don't necessarily have the ground to have a protection application unless you can actually offer something that's concrete.

If the family says, "Thank you for your concern but I don't want you to come back to my home," you have the choice of closing the file or going to court and you have to look at, well, what evidence would I have?

And sometimes I know that our Agency has been in situations where we go to court—and this doesn't happen often—but we go almost expecting to lose but at least we're going to make an effort. This might have been one of those situations.

Mr. Carriere also acknowledged that perhaps if Ms Lepage had interviewed or visited Ms Girard, she may have been able to identify who Jean Luc was. On November 3, 1994, however, the matter was signed off.

Mr. Carriere testified that Ms Lepage was a very conscientious and responsible person. He indicated that, had the CAS had the full name of the man, it would have been a very different circumstance. There was insufficient information to open a file with only a first name, and Ms Lepage would have had a difficult time searching CAS records, such as the list of people put on the Child Abuse Register and the logbooks for suspected and verified abusers, with only a first name.

Further concerns regarding neglect were raised by Ms Girard in 1995 regarding this family, but the topic of “Jean Luc” did not resurface. As will be discussed later, this student, identified as C-82 for the purpose of the Inquiry hearings, was considered in 1999 by the OPP to be a potential victim of Mr. Leblanc, and, in 2001, Mr. Leblanc was charged in relation to sexual offences against him and others.

The CAS Gets More Information About Mr. Leblanc

On January 6, 1995, Françoise Lepage received a call from Valerie Nadon. According to Ms Lepage's notes, Ms Nadon told her that she saw a convicted sex offender, whom she referred to as Jean Luc, on January 6 or 7, 1995, with an eight-year-old boy outside her store. Ms Nadon indicated that her brothers had been sexually abused by this man when they were about the same age as this boy. Ms Lepage asked for Jean Luc's surname. On January 10, 1995, Ms Nadon called back and provided Ms Lepage with the surname “Leblanc.” According to her notes, on that same day, Ms Lepage did a records search confirming that Jean Luc Leblanc was on the Child Abuse Register.

On January 19, 1995, Ms Lepage contacted Staff Sergeant Luc Brunet of the CPS and requested a record search on Jean Luc Leblanc. He informed her that Mr. Leblanc had received a suspended sentence in 1986 and three years probation for gross indecency. Ms Lepage also made a number of calls to the court, the probation office, and to Staff Sergeant Brunet to attempt to determine any conditions on Mr. Leblanc's release, as well as his whereabouts. Ms Lepage noted that on January 25, 1995, she met with Mr. Carriere and it was decided that the CAS could not pursue the matter because it did not have Mr. Leblanc's whereabouts or any identifying information regarding the child who had been seen with him. Further, there were no allegations of harm to the child he had been seen with. Mr. Carriere testified that he did not know if he was involved in the case at this stage. The file was closed because they did not think that they could find Mr. Leblanc. It is of note that, in this instance, the file was opened under the name “Leblanc,” as the CAS did not have the names of any children involved.

With respect to the difficulty in locating Mr. Leblanc, Mr. Carriere testified that they could have asked the police to consider doing a driver's licence check for Mr. Leblanc. He specifically noted that, as a result of this case, he has “recommended to the Society that they arrange to meet with police departments to look at different ways in which they can find people that otherwise can't be found” and that “the Society ... develop a list of measures that could be taken to find people.” I agree with Mr. Carriere that this would be a good step to take.

Mr. Carriere testified that, at the time, he was not linking the concerns about “Jean Luc” that were expressed to the CAS of SD&G in the fall of 1994 by Ms Girard and those about Mr. Leblanc expressed by Ms Nadon. He testified that he

was certain there was no discussion about the connection between the two reports. As a phone intake worker, Ms Lepage would have many cases referred to her and, in this instance, did not connect the dots. He suspected that, if Ms Nadon's sighting of Jean Luc Leblanc had been in the city, this fact might have contributed to the failure to connect to the earlier case, which had taken place in a county location.

A Report to CAS That C-81 Was Living in a Tent in Mr. Leblanc's Backyard

On September 3, 1998, it came to the attention of the CAS of SD&G that a young boy, C-81, had been living in a tent in a backyard in Newington. The boy had no money or clothes and was asking for food. The worker assigned to the file was Brian MacIntosh. Bill Carriere, as coordinator of services, was the supervisor who handled only the intake referral. Bernie Lamarche was the supervisor.

Case notes indicate that Mr. MacIntosh spoke to C-81 on September 3, 1998, at Mr. Leblanc's home, in whose yard C-81 had been living. C-81 indicated that he had been staying with a friend, Jean Luc Leblanc, and that his parents knew he was there. Mr. MacIntosh left his card for Mr. Leblanc and left a note at C-81's home. Mr. Carriere testified that he did not recall speaking to Mr. MacIntosh after this visit or having any knowledge that the visit was to Mr. Leblanc's home. Mr. Carriere acknowledged, however, that Mr. Leblanc was known to the CAS at this time.

On that same day, Mr. Leblanc called the CAS of SD&G and spoke to worker Gordon Lanctôt, who was the duty worker in emergency services that day. Mr. Lanctôt recorded that Mr. Leblanc told him that C-81, who was thirteen years old, and another boy, C-82, who was fourteen, had permission to camp in his yard. Mr. Lanctôt recorded that he stated to Mr. Leblanc that he was not aware of the case and suggested that Mr. Leblanc call Mr. MacIntosh. He also noted that he would inform Mr. MacIntosh of the call. Mr. Carriere testified that Mr. Lanctôt did not check Mr. Leblanc's name or the name of the boys. Mr. Carriere would not have expected the after-hour worker to do so.

On September 8, 1998, Mr. MacIntosh called Mr. Leblanc. According to Mr. MacIntosh's notes, Mr. Leblanc said that C-81 was there because he liked to hang around with another boy in the community, C-82. He said C-81 was not abandoned and that his mother had picked him up the previous night. At this point, Mr. MacIntosh had neither spoken to the mother nor realized that Mr. Leblanc was a convicted sex offender who was known to the agency.

That same day, Mr. MacIntosh did try to contact C-81's mother, but spoke only to her boyfriend. On September 11, 1998, he spoke to C-81's mother, who

was upset that her son had told people in Newington that he had been left. C-81's mother said he was not abandoned. As will be discussed below, it is of note that, on this very day, another worker at the CAS also received information from the CPS that Mr. Leblanc had been seen in the company of young boys.

CAS documents dated September 14, 1998, indicate that C-81 was living with a family friend, Jean Luc Leblanc, and that his mother had given him permission to be there. The family was in temporary accommodations because they had bought a farm and would be moving mid-September. C-81 had returned home on September 8, 1998. The plan was to close the file. Mr. Carriere testified that there was no information available to Mr. MacIntosh to suggest that Mr. Leblanc had harmed this child or was going to harm the child. The child was not reporting that he had been harmed, and the mother subsequently didn't suggest that she was upset about anything. That said, he wished that they had "connected the dots." Mr. Carriere testified that, had Mr. MacIntosh known who Mr. Leblanc was, he would have expected a different course of action.

According to Mr. Carriere, in a perfect world, one would want to check every name, but so many names go by a CAS worker in the course of a day that a considerable amount of time could be spent checking them. The actual process of doing it is quite simple but, like most tasks, it stretches out. He did not know what could have been done differently, short of checking every name. He noted that there are certain situations in which names should be checked and that guidelines as to when those names ought to be checked would be helpful. He provided, by way of example, that an automatic check could be done when a child is staying with a substitute caregiver. I agree with Mr. Carriere.

It was only on January 7, 1999, that the CAS realized that C-81 had been staying in the backyard of convicted sex offender Jean Luc Leblanc. Mr. MacIntosh had read a newspaper article that explained that Mr. Leblanc of Newington had been charged with sexual assault as a result of the Ontario Provincial Police (OPP) Project Truth investigation. Mr. MacIntosh contacted Detective Constable Steve Seguin of the OPP and informed him of the agency's involvement with C-81 in 1998. Mr. MacIntosh was advised that C-81 had already been interviewed and, during this interview, had not disclosed sexual abuse. Mr. Leblanc was eventually charged with four counts of sexual offences involving C-81. The investigation, arrest, and prosecution of Jean Luc Leblanc is discussed in Chapter 7, on the institutional response of the OPP, and Chapter 11, on the institutional response of the Ministry of the Attorney General.

This incident prompted a risk management conference to determine if the CAS of SD&G needed to take any further steps. The minutes of the meeting indicate that a decision was made to contact the police and ask if the agency could communicate with C-81's parents in order to receive their assurances that

there would be no further contact between Mr. Leblanc and C-81. Mr. Carriere testified that, depending upon the response of the parents when spoken to, there may have been some follow-up with the child.

Report to CAS That Mr. Leblanc Was Seen With Young Boys

Around the same time that Mr. MacIntosh was made aware that C-81 was sleeping in a tent in the backyard of Jean Luc Leblanc's home in Newington, on September 11, 1998, CAS worker Lise Stanley, received a call from Constable George Tyo of the CPS. Constable Tyo was calling to pass on information the police had received from Vivian Burgess, the mother of Scott and Jody Burgess, who had both been sexually abused by Mr. Leblanc in 1986. Ms Burgess contacted the police because her daughters saw Mr. Leblanc in the company of two young boys at the shopping centre and the motor speedway in Cornwall.

The family was quite concerned that the children might be at risk from this individual, as they appeared to be around the same age as the Burgess boys when they were sexually abused by Mr. Leblanc. Constable Tyo indicated that Mr. Leblanc lived in the Newington area and that this information had been passed on to the Long Sault OPP.

Ms Stanley consulted with Mr. Carriere later that day. She reported that a decision had been made to contact Mr. Leblanc and invite him to come into the agency to discuss concerns that it had regarding him associating with young people. She also reported that she planned to contact the main source of the referral and the OPP to obtain further information, if any, on Jean Luc Leblanc.

Mr. Carriere testified that the CAS of SD&G was aware that one of the conditions of Mr. Leblanc's sentence was to get counselling. The agency had not received any reports that Mr. Leblanc had harmed anyone and when the CAS followed up with various professionals, they knew nothing of him. In having Mr. Leblanc come in, the goal was to determine whether he had received any treatment and to plan accordingly.

Mr. Carriere testified that Mr. Leblanc was never brought in and that he did not think that Ms Stanley had spoken to the OPP. He explained that the failure to bring in Mr. Leblanc was the result of a "workload issue" with Ms Stanley. She was a phone intake worker and was too busy to do these tasks. Mr. Carriere acknowledged that he should have assigned this case to an investigator and told them to meet with Mr. Leblanc promptly. He also acknowledged that the OPP should have been contacted at an early stage to find out what, if anything, they were going to do.

Mr. Carriere acknowledged that this case did not receive much priority. This was despite the CAS's knowledge that Mr. Leblanc was a convicted sex offender.

CAS–OPP Project Truth Contact Regarding Jean Luc Leblanc

On January 14, 1999, CAS worker Pina DeBellis was contacted by Constable Joe Dupuis, an OPP Project Truth officer investigating allegations against Mr. Leblanc. He was looking for the contact information for the principal from St. Mary's School who had referred the matter regarding C-82 to the CAS in 1994. The OPP was considering C-82 as a new alleged victim of Mr. Leblanc.

Mr. Carriere indicated that the OPP were concerned with boys going to Mr. Leblanc's residence after running away from a foster home. C-82 was one of these boys. As is discussed in Chapter 7, on the OPP, Mr. Leblanc had been charged in January 1999, and one of the conditions of his release was that he not be in contact with children under sixteen unless supervised. Mr. Carriere testified that he had a telephone conversation with a police officer from the OPP and helped the officer get in touch with C-82.

The file notes suggest that the CAS communicated to Constable Dupuis that the CAS file system was not set up by alleged offender but by victim. Presumably, this may create some challenges in gathering information if only the alleged offender is identified in a complaint. Mr. Carriere testified that, in 1999, the CAS would have had information about Mr. Leblanc in the files of the 1986 victims known to the agency. Also, as noted above, in 1995 a file was opened in Leblanc's name, as the CAS did not have the names of the victims. It would have also have had a binder of suspected or verified offenders and could have checked the Child Abuse Register. If the police had provided a list of children, it could have also checked to see if the agency had files on those children.

The CAS did not conduct an administrative review in the Leblanc matter to determine what went wrong and to try to make changes to its internal system.

Cross-Referencing of Files and Information

The CAS of SD&G was actively involved in the 1986 investigation that resulted in Jean Luc Leblanc's conviction for sexual offences involving children. In the 1990s, on several different occasions, the CAS of SD&G was made aware of incidents of children being in the company of a man named "Jean Luc" and, at times, even had his full name. However, it was not until the publication of Mr. Leblanc's arrest by Project Truth officers in 1999 that the CAS of SD&G realized who Jean Luc Leblanc was. The institutional response of the CAS, its managers, and employees was deficient on each of these occasions.

In my opinion, it is imperative that an agency that deals with a matter as vital and sensitive as the protection of children have an adequate system for cross-referencing and searching names of alleged or convicted child abusers.

Conclusion

In examining the institutional response of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS of SD&G), I had the opportunity to review a great deal of documentary evidence and to hear testimony from a number of CAS managers, supervisors, and case workers and former wards of the CAS of SD&G. Throughout this chapter, I have made some conclusions and recommendations about specific issues, and I will not repeat them here. I would instead like to comment on some of the general themes that have become apparent as a result of my examination of the agency's institutional response.

In this chapter, I examined incidents of abuse at several foster homes and group homes operated by the CAS of SD&G and the response of the agency to these allegations. I also looked at the role of the CAS of SD&G in investigations of allegations of abuse of children not in the agency's care, such as its involvement in the investigation of Father Charles MacDonald in 1993–1994, Jean Luc Leblanc in 1986, and Earl Landry Jr. in 1985 and 1993. I also examined the interactions that the CAS of SD&G had with public institutions, such as police services, school boards, the Crown attorney's office, the Diocese of Alexandria-Cornwall, and other public and community agencies and organizations. I have made recommendations that I believe may enhance those relations in an effort to improve the response to allegations of abuse in this community and others.

Today, child protection is a highly regulated and document-intensive area. I began this chapter with an examination of the evolution of legislation and the policies, protocols, and procedures of the CAS of SD&G in dealing with issues such as the duty to report, the operation of foster homes, the investigation of child abuse allegations, and reporting to the Child Abuse Register.

Over the past thirty years, there has been a vast improvement in the formalization of procedures and policies regarding how the CAS of SD&G operates. Of particular importance has been the development of policies pertaining to the screening and training of staff, intake and investigation procedures, and foster homes. Although training of staff has been much more extensive and formalized than it was previously, I was disappointed to hear of the suspension of the investigative training provided by the Institute for the Prevention of Child Abuse and then the Ontario Association of Children's Aid Societies, at times in partnership with the Ontario Police College. This training was provided to CAS and police jointly. I heard testimony from many witnesses about how valuable this training was. I recommend that a similar type of joint training be reinstituted, to be offered to both social workers and police officers.

I heard evidence that the Child Abuse Register (CAR) and the Child Protection Fast Track Information System are not available to Children's Aid Societies in Ontario for the purpose of screening potential employees or foster parents. I recommended that a review of the purpose and usefulness of the CAR be undertaken and consideration be given to whether it still serves a useful purpose in its present form. If the decision is made to keep the CAR, I echo the recommendations made by several witnesses that the names of victims be excluded from the register and that it be used as a screening tool for potential employees and foster parents.

In terms of intake procedures, the introduction of the Ontario Risk Assessment Model (ORAM) in 1998 provided clearer guidance to workers about which referrals require further involvement of the agency and also gave greater prominence to cases of historical sexual abuse than did past guidelines and procedures.

Although I am pleased to see the extensive number of policies and protocols that have been put into place by the CAS of SD&G, I note that the agency has not established a schedule for reviewing and updating of applicable protocols and policies. As a result, it appears that some time has passed without update. For example, the multi-agency protocol "Child Protection Protocol: A Coordinated Response in Eastern Ontario" was adopted in 2001. It is my view that a schedule for review and appropriate updates of protocols and policies should be developed, ideally with every protocol and policy being reviewed every three years, and more frequently if there is relevant legislative change.

Although internal policies and protocols within the CAS of SD&G have clarified the agency's involvement in cases of historical sexual abuse, the legislative duty to report cases of historical sexual abuse remains unclear. Witnesses from other institutions testified that the duty to report in historical cases was not clear. The most prominent example of this is in the case of David Silmsen's allegations against Father MacDonald. Because the CAS's mandate does not extend to adults, and Mr. Silmsen was an adult making an allegation of historical sexual assault, there was some confusion about whether this allegation should be reported to the CAS. Richard Abell testified that he felt it was clear that this allegation should be reported because Father MacDonald was an active priest and therefore still could pose a risk to children. Currently, the legislation provides for a duty to report in a number of circumstances, including when "there is a risk that the child is likely to be sexually molested or sexually exploited..." This can be interpreted as requiring someone to report an allegation of historical sexual abuse where there is a suspicion that the alleged abuser could be currently abusing children. However, the use of the phrase "the child" may be interpreted as requiring suspicion that a particular child may be at risk of abuse. I recommend that the legislation be amended to clarify that the duty to report provisions apply

to cases of historical abuse where there is a risk that the alleged abuser has current access to children.

There is also a lack of clarity about which cases the CAS will become involved in. The CAS does not investigate all cases of harm to children but rather investigates only those cases in which harm is caused by a “caregiver” or a person “in charge of the child.” The 1985 allegations against Earl Landry Jr., for example, were not investigated by the CAS of SD&G because the agency did not consider Mr. Landry Jr., a caretaker at a park, to be a “caregiver.” Therefore, he did not fit within the mandate of the agency. The definition of “caregiver” is found in the eligibility spectrum, which is one component of ORAM. That document provides for three types of caregivers. A *primary caregiver* is a child’s parent, a caregiver exercising access contact, and an adult with a custody and control order for the child in question. An *assigned caregiver* includes a daycare worker, babysitter, a family member providing substitute care, and a partner of the caregiver. An *assumed caregiver* includes individuals such as teachers, school bus drivers, and recreational group leaders. I heard from CAS witnesses that, although this definition has expanded over time to include more categories of individuals, it is still not clear in certain circumstances.

Part of the difficulty arises from the fact that the current *Child and Family Services Act* uses the term “having charge of the child” rather than “caregiver.” The phrase “having charge of a child” is not defined in the *Act*. It is explained for CAS workers in the Ministry’s Standards and Guidelines (1992) as referring to a parent, a person exercising parental rights, or anyone having responsibility for caring for a child. The guidelines provide that the determination of whether or not someone is in charge of a child will depend on the facts of each case.

I recommend that steps be taken to ensure that the language used in the legislation and in CAS policy documents is consistent. The definition of caregiver in the eligibility spectrum should be consistent with the definition of a person having charge of a child found in the *Child and Family Services Act*, and in the Revised Standards and Guidelines (1992). The definitions should be clarified and extended to ensure that the CAS is involved in reported allegations of historical abuse when there is a child currently at risk.

This is an area where joint training could help ensure that all institutions that frequently come into contact with children are aware of, and have the same understanding about, their obligations to report to the CAS and about the mandate of the CAS.

I also considered in this chapter the investigation by the CAS of SD&G of allegations of sexual and physical abuse made by children in the care of the agency against foster parents and CAS case workers. The CAS takes children out of situations of abuse or neglect and places them in what are supposed to be

safe environments. Unfortunately, some of these placements were not safe, and these children and youth continued to be victimized. The tendency in the past to not believe children, especially “troubled” or “bad” children, meant that these allegations were often dismissed as lies and exaggerations. The reaction of the agency to allegations made by girls living in the Cieslewicz home is an example of this issue. The allegations by several girls in that home were dismissed because the girls were thought to have a tendency to lie. Promiscuity was also often noted as a reason not to investigate the allegations or as a factor mitigating the seriousness of the allegations. I am hopeful that we have emerged from the time when such attitudes were prevalent and acceptable. All allegations of abuse made by children must be treated as serious, regardless of the child’s background or behaviour.

In a number of cases I looked at, allegations made by children in the care of the CAS were not reported to the police. This occurred with respect to allegations made against members of the foster families in both the Cieslewicz and Lapensee homes. The practice of the CAS of SD&G was to discuss these matters with the Crown attorney and not refer them to the police unless specifically told to do so. Because it is the police, and not the Crown attorney, who investigate and decide whether charges are warranted, all allegations of abuse should be reported to the police. I am satisfied that this issue is now addressed by CAS policy.

A number of the cases I looked at involved allegations against staff of the CAS of SD&G. In particular, C-14 alleged that his worker, Bryan Keough, was aware of the abuse he suffered at the Barber foster home. Jeannette Antoine also disclosed allegations of abuse by Bryan Keough to the CAS of SD&G in 1989. In neither case did the agency retain an outside Children’s Aid Society to investigate the matter, and, in the case of C-14, Mr. Keough himself conducted the investigation. I understand that the practice today is that an outside agency is brought in to investigate when allegations are made against an employee of the CAS of SD&G. This practice was formalized in the 2001 “Child Protection Protocol: Coordinated Response in Eastern Ontario.” Although I am pleased that there has been some formalization of this practice, this is a joint protocol with a number of other agencies. I recommend that the CAS of SD&G have an internal, and more detailed, policy about how to handle these conflicts of interest.

Several individuals testified that they disclosed abuse to a CAS worker but there was no follow-up. Such allegations were made by C-14, Jeannette Antoine, Catherine Sutherland, and Roberta Archambault. In all of these cases, there was no recording of this disclosure in the child’s file. As I commented throughout this chapter, I am not prepared to conclude that the absence of such a recording means the disclosure never occurred. I also discussed the fact that, in many of these cases, there were entries in the file about sexual misbehaviour that, given the

age of the children, should have alerted the CAS to potential issues and warranted some investigation.

Another problem faced by many of the former wards who testified before me was gaining access to their file after they had left the care of the CAS of SD&G. These individuals had to contend with excessive delays and insufficient disclosure and often had to retain counsel to assist them in dealing with the agency on this issue. In the case of Catherine Sutherland, it took twelve years, and numerous letters to CAS staff, board members, and a politicians before she received a heavily redacted copy of her file. I have commented on a recommendation made by Ian MacLean that certain information about a child's life while in the care of the CAS be compiled and disclosed to the individual if requested in later years. Steps should be taken to make the compilation and disclosure, if requested, of this information mandatory for all Children's Aid Societies in Ontario.

In several cases I looked at, an issue arose about whether the CAS should notify the employer of an individual accused of sexual abuse, and, if so, when that notification should take place. It appears that, currently, there is no legislative or policy guidance on this point, and the CAS of SD&G considers this issue on a case-by-case basis. I found the practice of the agency to be inconsistent on this issue. When a decision was made to initiate the Project Blue investigation into Father MacDonald, officials from the CAS of SD&G met with Bishop Eugène LaRocque and advised him of the impending investigation. In this case, the Bishop was already aware of the allegations against the priest, which may have made this a different situation from one in which the employer has no advance knowledge of the allegations. However, despite this knowledge, the CAS of SD&G still felt it was necessary to obtain Father MacDonald's consent before informing the Bishop of the results of the investigation. In the case of Bernie Campbell, a volunteer coach, the Cornwall Parks and Recreation Department was contacted immediately, but in the cases of Earl Landry Jr. and David Silmsers' allegations against Marcel Lalonde, the employers were not contacted. Given this inconsistency, I am of the view that there needs to be some direction about when an employer should be notified.

It is my view that the CAS of SD&G should formally develop a policy regarding disclosure of allegations of abuse to employers. There is a provision in the 2001 protocol about notifying an employer in cases of individuals employed in a school or childcare setting. However, this provision is not broad enough, and the Ministry of Community and Social Services should develop a standard to assist Children's Aid Societies across Ontario in determining which institutions they should be informing and in what circumstances. This policy should require disclosure to employers when an employee has allegedly sexually abused a child

and the employee, as part of his or her work, has regular contact with children. This policy should also address at what point disclosure will be made. For example, disclosure could be made upon receipt of a credible allegation or upon verification of abuse following a CAS investigation.

There should be designated individuals who review disclosure to employers to ensure consistency, and, in addition to file-specific documentation, there should be central files maintained on all disclosures.

There has been extensive development of policies and procedures within the CAS of SD&G and a tremendous shift in the attitudes and practices of those responsible for protecting children in need. I have made comments in this chapter about a couple of individuals from the CAS of SD&G involved in some of the cases I reviewed. I wish to make a few comments here about a number of other people. I found Richard Abell to be a candid and humble witness. His extensive and legible contemporaneous notes of events, in particular those relating to Project Blue, were of great assistance to me and other witnesses in trying to determine what happened a number of years ago. I am extremely grateful to Bill Carriere for his forthright evidence and insightful recommendations and for his effort in working with the CAS of SD&G in preparing for this Inquiry. I found that both Mr. Carriere and Mr. Abell readily admitted past errors. These men dedicated their careers to assisting children in need. Regardless of any errors they may have made in the past, I believe they were committed and compassionate about their work and no doubt improved the lives of many children in Ontario. Finally, I want to commend Tom O'Brien for having the tenacity and strength to testify at the Inquiry despite medical issues that made his attendance difficult for him.

I hope that this chapter has provided some guidance to the CAS and other institutions, and some answers to former wards of the agency and to the public. I hope and expect that the CAS of SD&G will use my findings and recommendations to continue to improve the vital service it provides to children and families in Ontario.

Recommendations

Policies, Procedures, and Protocols

1. Steps should be taken to ensure that the language used in the *Child and Family Services Act* and in Children's Aid Society (CAS) policy documents is consistent. The definition of caregiver in the eligibility spectrum should be consistent with the definition of a person having charge of a child found in the *Child and Family Services Act*, and in the Revised Standards and Guidelines (1992). The definitions in CAS policy documents should be clarified in order to provide more certainty as to when the agency does or does not get involved in an allegation of abuse, particularly in extra-familial situations.
2. The CAS of SD&G should develop a schedule to review and update policies and protocols triennially, and more frequently if there is a relevant legislative change.

Records

3. The CAS of Stormont, Dundas, & Glengarry (SD&G) should review its records-management system to ensure that the information it obtains can be easily cross-referenced throughout its activities, whether it receives child-protection information, foster-parent applications, or other information.
4. The CAS of SD&G should develop or augment guidelines to indicate when the names of individuals should be checked to see if they appear in any CAS records or databases. An automatic check should be performed whenever a child is staying with a substitute caregiver.
5. Case recordings made by CAS of SD&G workers should be more detailed. They should include the location of any meeting or interview with a child in care and should include more details of the supporting facts and observations when inferences related to sexual conduct are being drawn.

Foster-Home Files to Be Updated Regularly

6. The CAS of SD&G should ensure that foster-home files are updated regularly, particularly in cases where various workers are involved with children in the home.

Foster Children to Be Questioned Outside the Home

7. The CAS of SD&G should require workers to conduct meetings with children without the presence of foster parents, preferably in a location outside the foster home.

Unscheduled Visits to Foster Homes

8. The government of Ontario, and in particular the Ministry of Children and Youth Services or the Ministry of Community and Social Services, should make it mandatory that the CAS include in service agreements with foster parents unscheduled worker visits to foster homes.

Prevention of Conflicts of Interest in CAS Investigations

9. The CAS of SD&G should develop a detailed internal policy about how to handle situations where there is a conflict of interest, such as when allegations of sexual assault/abuse³³ are made by a ward against an agency employee or when an employee applies to be a foster parent or adopt a child. The policy should include a clear definition of a conflict of interest and require that an outside agency be asked to investigate in all cases where there is such a conflict.

Sexual Abuse Allegations to Be Communicated to the Police

10. The CAS of SD&G should amend its foster-care policy to provide that all serious occurrences involving allegations of sexual assault/abuse should be reported to the police for further investigation.

Disclosure to Employers

11. The government of Ontario, and in particular the Ministry of Community and Social Services or the Ministry of Children and Youth Services should develop a protocol to assist Children's Aid Societies across Ontario in determining when an employer should be advised of sexual assault/abuse allegations against one of its employees. This policy should require disclosure to employers

33. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

when an employee has allegedly sexually abused a child and the employee, as part of his or her work, has regular contact with children. Notification should take place only after a preliminary analysis. If there is a subsequent verification of the sexual abuse, given that the societal interest in the protection of children outweighs individual privacy interests, the CAS need not seek the employee's consent before its disclosure to the employer.

Duty to Report

12. The government of Ontario should amend the *Child and Family Services Act* to clarify that the duty-to-report provisions apply to cases of historical abuse where there is a risk that the alleged abuser has current access to children.

File Disclosure

13. The government of Ontario, and in particular, the Ministry of Community and Social Services or the Ministry of Children and Youth Services, should develop standards and provide guidance to all CAS on disclosure of records and the type of records individuals formerly in the care of a CAS should receive. This should include a review of the provisions of Part VIII of the *Child and Family Services Act*, which deals with confidentiality and access to records.
14. The government of Ontario and, in particular, the Ministry of Community and Social Services or the Ministry of Children and Youth Services, should require Children's Aid Societies to compile the following information with respect to all wards in their care:
 - a record of their updated social history;
 - their full medical history;
 - the contact information for mental health professionals who have done tests and produced reports for them, along with information on how to obtain those reports and test results;
 - a full list of schools attended, with the names of teachers, the grades completed, and copies of report cards;
 - a list of the foster homes where they lived, including the dates and placements and the names of the foster family members living with them in the home; and

- a list of churches, clubs, and so on, attended and any certificates received from these organizations.

A sign-off by a parent or guardian or the youth him- or herself would be required prior to authorizing the release of the information. A full copy of the material, including the sign-off, would be kept by the CAS at the front of the child's file and, except in exceptional circumstances, would be immediately available to the individual if requested in later years.

15. If requested, the CAS of SD&G should provide former wards or those subject to protection orders with timely access to a copy of their file with confidential information pertaining to other people redacted. Except in exceptional circumstances, information such as the following should not be redacted:
 - a. the names of foster parents
 - b. the names of CAS worker(s); and
 - c. the names of other wards residing in a particular foster home. (Personal information about the children and their particular circumstances should be redacted to protect their privacy interests.)

Counselling

16. The CAS of SD&G should ensure that every effort is made to encourage and support wards who have been sexually assaulted/abused to attend counselling.

Reassessment of the Child Abuse Register

17. The government of Ontario and, in particular, the Ministry of Community and Social Services or the Ministry of Children and Youth Services, should undertake a review of the Child Abuse Register and determine whether it still serves a useful purpose in its present form. If the decision is made to keep the Child Abuse Register, it should be revised to exclude the names of victims and the CAS should be allowed to use it as a screening tool for potential employees and foster parents.
18. The government of Ontario should permit the CAS to use the Child Abuse Register and the Child Protection Fast Track Information System to screen its prospective employees and foster parents.

Recommendations for the Children's Aid Society of Stormont, Dundas, & Glengarry and Other Public Institutions

Joint Training

19. The government of Ontario and the responsible ministries should reinstitute joint training for CAS and police officers as soon as practicable. This joint training should include specific training on responding to historical allegations of abuse. For some aspects of training, consideration should be given to including other Justice partners, such as Crown counsel or those working in hospitals, in specialized assault units. Joint training might also support more standardization or the development of “best practices” protocols between police and Children's Aid Societies.

Child Protection Protocol, 2001

20. The CAS of SD&G is a partner in the “Child Protection Protocol: A Coordinated Response in Eastern Ontario” (July 2001). Since this protocol has not been updated, the CAS of SD&G should meet as soon as practicable with other partners to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on the sharing of information between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

Institutional Response of School Boards

The Upper Canada District School Board (UCDSB) and the Catholic District School Board of Eastern Ontario (CDSBEO) are both parties to this Inquiry. This chapter sets out the institutional response of the two boards and of predecessor boards with respect to allegations of sexual abuse of children and young people. For both boards, information on the characteristics of the boards and relevant policy change over time is discussed. As context, information is provided on the special features of a Catholic education within a publicly funded school system and how changes to how Catholic education is funded have affected organizational change at both school boards.

The sections on the UCDSB address issues related to three men employed by predecessor school boards: Robert Sabourin, Gilles Deslauriers, and Nelson Barque. Also examined are the circumstances that led to the hiring of Jean Luc Leblanc, an individual convicted of sexual offences against children, as a school bus driver for the UCDSB, and the actions taken by employees of that Board in response to the arrest of Mr. Leblanc in January 1998 for additional sexual offences.

The sections on the CDSBEO address issues related to teachers Marcel Lalonde and Gilf Greggain and to Principal Lucien Labelle.

Where relevant to the subject matter discussed, I make recommendations for future change.

Upper Canada District School Board

Introduction

The Upper Canada District School Board (UCDSB) is a publicly funded English-language board serving students in the County of Lanark, the United Counties of Leeds & Grenville, the United Counties of Prescott and Russell, and the United

Counties of Stormont, Dundas & Glengarry. Its head office is in Brockville and there are four satellite offices, one of which is in Cornwall.

The Board has 21,000 students in 79 elementary schools and 13,000 secondary students in 24 secondary schools. Approximately 2,500 students attend alternative and continuing education programs at 30 sites across the Board. There are 5,500 staff, including teachers, administrative, professional, and custodial staff.

Reorganizations Affecting the School Board Over Time

Before 1990, the public school boards in the Cornwall area provided services to elementary and secondary English and French students and Catholic secondary students. Catholic secondary school students moved to Catholic boards in a gradual process between 1984 and 1990, as the government of Ontario provided full funding. In 1997 and 1998, French-language elementary and secondary schools and students moved to French-language school boards. When secondary-level Catholic French schools, such as La Citadelle, were transferred to a new board, all facilities and staff went with the transferred school. La Citadelle was transferred to a Catholic school board in 1989, and subsequently to a French-language Catholic school board.

School board reorganization has occurred several times in the past. For example, there was a 1969 amalgamation that created the Stormont, Dundas & Glengarry (SD&G) County Board of Education. In the 1970s and 1980s, this Board had approximately 54 schools, 12,000–14,000 students, 800 teachers, and 400 staff. Students and staff reduced over time, due to declining enrolment and movement of Catholic secondary students to schools in Catholic boards. In 1997, there was a major restructuring of several area school boards pursuant to the *Fewer School Boards Act, 1997*.¹ Four area public school boards, including the SD&G County Board of Education, were merged to create the current Upper Canada District School Board. There are still outstanding issues from this challenging amalgamation and restructuring. The current Director of Education, David Thomas, testified that some protocols still need to be brought “up to speed.”

School Management Structure

Principals manage elementary and secondary schools; for some larger schools, they are assisted by vice-principals. Principals are responsible for the administration of educational programs, supervision of teaching and administrative staff,

1. S.O. 1997, c. 3.

discipline of students, and management of school facilities. Before the 1990s, principals were part of collective bargaining units for teachers.

Principals report to superintendents, who usually have responsibility for groups or “families” of schools and sometimes have additional program responsibilities on behalf of the Board, such as responsibility for special education. In more recent times, responding to the Robins Report² and to Ministry of Education initiatives on safe school environments, there has been a Safe Schools Superintendent. Superintendents report to the Director of Education, who reports to the Board and is also the Secretary of the Board of Trustees.

Duty to Report Abuse

The 1965 *Child Welfare Act*³ provided that “every person” must report a child in need of protection to the Children’s Aid Society (CAS). The *Act* did not specifically mention teachers, principals, or other professionals. The law relieved those reporting from the obligation to treat information as subject to legal restrictions, so teachers and staff could obtain and transmit confidential information in making reports to Children’s Aid Societies. Changes to the *Child Welfare Act* occurred in 1978.⁴ Specific references to reporting “abuse” were added to the requirement to report a child in need of protection, and specific responsibilities were introduced for professionals, such as teachers, to report. Penalties for failure to report were also set out.

Mr. T. Rosaire Leger, who was the Director of Education for the SD&G County Board of Education from 1973 to 1988, indicated that these changes were communicated through regular staff meetings with principals during the 1970s and 1980s. Special education teachers were also informed.

Further amendments to the *Child and Family Services Act*, the successor to the *Child Welfare Act*, occurred in 1984 regarding the duty to report.⁵ Mr. Leger testified that this information was communicated at general meetings, through principals’ meetings, and through the established special education network. Mr. James Dilamarter succeeded Mr. Leger as the Director of Education for the SD&G County Board of Education. He held this position until 1997, following which he was the Interim Director of the UCDSB for three months in late 1997

2. Sydney L. Robins, *Protecting Our Students: A Review to Identify and Prevent Sexual Misconduct in Ontario Schools* (Toronto: Ontario Ministry of the Attorney General, 2000).

3. *Child Welfare Act*, 1965, S.O. 1965, c. 14.

4. *Child Welfare Act*, 1978, S.O. 1978, c. 85.

5. *Child and Family Services Act*, 1984, S.O. 1984, c. 55, consolidated in 1990 as the *Child and Family Services Act*, R.S.O. 1990, c. C.11.

and early 1998. He testified that during his tenure as Director of Education, this communication approach continued but there was also the introduction of a written policy manual, which will be discussed later in this section.

Mr. Leger testified that allegations made against someone not employed by the School Board would usually be reported to a superintendent but not necessarily to the Board since they did not relate to a staff member.

Hiring and Termination of Teachers

Hiring of teachers has always been done at the School Board level. Mr. Leger testified that during his tenure in the 1970s and 1980s, he advocated direct reference checks by telephone rather than relying on written references. Teachers were also required to have teaching certificates and certain other qualifications related to education. Today, the Board does criminal record checks on all employees.

Before 1988, there was no written policy governing what to do if there was a report of abuse by a teacher or other school employee. The practice was to remove the accused person from his or her duties, report to the CAS, and send the person home with pay. The individual would be suspended with pay until criminal charges were resolved and/or the CAS investigation completed. Mr. Leger testified that any report of abuse against a teacher had to be reported to the Director of Education and the School Board.

In April 1989, the Stormont, Dundas & Glengarry County Child Abuse Protocol came into effect. It was a written consolidation of the procedures in effect before the protocol was implemented. James Dilamarter testified that as the new Director of Education, he thought the procedures should be in written form. This protocol was in effect until 1998.

The current policy continues to be that an employee who is accused of abuse is suspended with pay and removed from the school setting by the Human Resources Department. Amendments to the *Education Act*⁶ in 2002⁷ provide that if teachers are charged with sexual offences regarding minors or other offences that place students at risk, they must be removed from classroom duties. The current Director of Education, David Thomas, indicated that this statutory obligation was already “long-standing” UCDSB policy.

From 1993 until direct reporting to the Ontario College of Teachers was instituted, school boards were required to report to the Ministry of Education convictions of teachers for any offences involving sexual conduct and minors or any other offences that could place pupils at risk. School boards must now

6. R.S.O. 1990, c. E.2.

7. *Student Protection Act*, 2002, S.O. 2002, c. 7.

report teachers who are charged or convicted directly to the Ontario College of Teachers. The College also has an obligation to inform school boards of any outcome of its licensing or disciplinary processes.

If the CAS or police declines to investigate or there is no conviction, the UCDSB may still perform a further investigation and terminate an employee. UCDSB policy following conviction requires termination but if the individual is acquitted, the UCDSB conducts a comprehensive review and has discussions with the College of Teachers. Even on acquittal, the UCDSB may terminate a teacher.

The 2002 *Ontario College of Teachers Professional Advisory* provides that in the case of misconduct that is not of a criminal nature, school board staff or a third party may conduct an investigation. For example, a teacher's inviting students to his or her home to swim in the pool may not be criminal but is inappropriate. In addition, the *Ontario College of Teachers Act, 1996* contains a definition of sexual abuse, and any of the acts included in the definition would be considered professional misconduct. The UCDSB has no specific policy on steps or procedures for sexual misconduct that is not criminal or reportable. In such cases, it exercises individual discretion and confers with counsel.

The current policy of the UCDSB is to provide a "full reference or no reference" for departing teachers. This follows the Ontario College of Teachers reporting procedures. In addition, personnel files reflect the reasons for any resignations related to allegations of sexual misconduct.

Transportation Contractors

Private providers deliver school bus services under contract with the UCDSB. This was also the case with the Board's predecessors. Although there was an expectation that transportation service providers would screen their own drivers, prior to 1999 there were no formal, documented requirements. Criminal record checks are done by the Ministry of Transportation as part of the application for a "B" class licence, which is required to operate a school bus. Since 1994, the Ministry cannot license drivers as school bus drivers if they have a conviction involving abuse of a minor within the last five years. An older record can be reviewed, and there is discretion for the Ministry of Transportation to refuse a licence even for a very old conviction.

UCDSB officials indicated in correspondence in 1999 that it was expected that if a driver was a risk to pupils (for example, charged with a sexual offence), the operator would remove the driver from a school route. Mr. Leger testified that he was not aware of any incidents during his tenure in the 1970s and 1980s. Current Director of Education David Thomas confirmed that this expectation for school bus operators continues to apply at the UCDSB.

In early 1999, formal standards of performance were developed by the UCDSB and incorporated into contracts with school bus operator contractors. Subsequently, a new draft transportation contract was circulated that included a provision requiring bus operators to obtain police criminal record checks for all new drivers prior to employment.

Relevant Protocols and Policies

Before 1989, many of the administrative processes and practices developed to respond to allegations of abuse were unwritten. In 1989, these were codified in the policy manual of the Stormont, Dundas & Glengarry County Board of Education. The policy manual included a child abuse protocol. While the protocol is dated 1989, Director of Education James Dilamarter indicated that most policies were already in place as practices, at least in the 1984–1989 period. The 1989 written protocol provided that teachers with “well-founded” suspicions of abuse or neglect of students were to report to principals, who would gather “information and insight” to decide if there were reasonable grounds to report to the CAS. If a principal did not report and a teacher still had suspicions, he or she was required to report directly to the CAS. The protocol indicated that if an allegation was made regarding a staff member, the Superintendent or Director of Education would be responsible for assessment and reporting. The policy also provided that pupils should not be interviewed at school in an investigation of extra-familial abuse without parental consent.

In 1992, a multi-party protocol was created that included school boards and other agencies. Developed largely by the Children’s Aid Society of the United Counties of Stormont, Dundas & Glengarry, it clarified processes and procedures of the 1989 protocol but dealt mainly with how the CAS and applicable police forces would handle a situation of abuse.

A revised protocol was signed in 2001 between the UCDSB, the CAS for the United Counties, and relevant police services and other organizations and is still in effect. It outlines responsibilities for reporting abuse and procedures and assistance. In this protocol, all investigation is clearly left to the CAS or police services.

This protocol also makes it clear that teachers must report to the CAS, not to their principals. This policy change was effective in 2001. The 2001 protocol has not been updated as of January 28, 2009.

The 2003 *Ontario Eastern Region Police and School Board Protocol* ensures that multiple interviews are avoided and addresses investigations in schools and police access to school information. This protocol is currently in place and is based on a provincial model for local police–school board protocols. It

provides more detail on policies and practices related to the interrogation of pupils by police.

The *Safe Schools Act, 2000*⁸ deals with the conduct of students, not teachers or other adults, and provides the authority to address inappropriate behaviour, including sexual misconduct, by students at schools. However, the *Ontario Schools Code of Conduct*, which applies to all schools, sets out behaviour standards for all individuals in schools, not just students. The *Code* includes requirements to comply with all laws, engage in respectful conduct, and take measures to help those in need.

Current Director of Education David Thomas testified that counselling is provided to students, family members, and victims of historical abuse at the UCDSB, pursuant to Board policy.

Robins Report

From the late 1970s to the early 1990s, Mr. Kenneth DeLuca, a teacher of the former Sault Ste. Marie Roman Catholic Separate School Board, sexually abused a number of female students. Allegations led to charges and convictions. The Honourable Sydney L. Robins, a former judge of the Court of Appeal of Ontario, was mandated to look into these events and “make recommendations regarding protocols, policies and procedures to effectively identify and prevent sexual assault, harassment or violence.”

Protecting Our Students was an important report by Justice Sydney Robins, released in 2000. The Robins Report provided information on the extent of sexual abuse of students by teachers, including grooming practices, and the serious impact of such abuse. The Report indicated that 70 percent of children do not report such abuse. The Report had a significant influence on school boards as it made many recommendations for change, for example, that teacher and staff references should be checked and criminal record checks done. The Upper Canada District School Board does criminal background checks for volunteers and employees every two and a half years.

The Robins Report also recommended periodic review of policies and procedures on sexual misconduct by the Ministry of Education in cooperation with Ontario school boards. Director David Thomas, in reviewing the UCDSB’s progress with respect to the Robins Report, did not know if these policies and procedures had been specifically reviewed as recommended. Because of the importance and relevance of the Robins Report, Mr. Thomas assisted this Inquiry

8. S.O. 2000, c.12.

by going through key recommendations of the Robins Report and indicating the UCDSB's status with respect to many recommendations.

He acknowledged that more work needs to be done with respect to training teachers and staff at all levels. Mr. Thomas testified that the Board does not have funds to prevent misconduct before it occurs or ascertain whether a child may have been abused before any report, i.e., to train teachers to see the warning signs that could lead to early identification and response to abuse. The Robins Report recommended extensive training and funding of training in the area of child abuse, including prevention-oriented training and early intervention training, but the Upper Canada District School Board received no specific funds from the Ministry of Education for this.

The UCDSB has only recently started the volunteer training recommended by the Robins Report. David Thomas testified that the UCDSB needs more discretion for use of funding for such training to recognize and respond to abuse, not necessarily more money.

In compliance with the Robins Report, the UCDSB's current protocols identify even "second-hand" information or "in-confidence" information as reportable.

The *Teaching Profession Act*⁹ was clarified in September 2002¹⁰ to provide that a teacher reporting suspected abuse by another teacher did not need to inform that teacher of the report. Before this, belief that this notice was required led to reluctance among teachers to report. This issue was raised in the Robins Report as a possible impediment. The UCDSB has implemented this approach.

However, there are still areas of uncertainty in policies and protocols at the UCDSB. For example, it is not clear what should be reported to the CAS if a student is sixteen or older. As well, existing protocols do not appear to clearly identify how to deal with volunteers or others associated with the school if sexual misconduct occurs when the student is over sixteen. It is important to develop such policies because information about abuse of an older student may ultimately reveal abuse of younger students; in addition, students over sixteen may be under the power of an authority figure and criminal acts may have been committed. Students may also need and deserve counselling.

The UCDSB has no policies or protocols for communication plans after disclosure of alleged sexual misconduct, as recommended by the Robins Report. This means that possible unknown victims or family members are not aware of the potential for assistance. As well, it means that the public may be hearing only rumours, rather than having direct information from a responsible public institution.

9. R.S.O. 1990, c. T.2.

10. *Student Protection Act*, S.O. 2002, c. 7, s. 7.

While the UCDSB has made considerable progress in responding to the Robins Report, it needs to complete a review and updating of all its protocols and then to adhere to a regular process of review and updating. Some protocols have not been revised since 2001. In particular, in my view the UCDSB should have policies in place for sexual abuse related to students sixteen and older and for communication plans when the UCDSB is affected by disclosure, charges, or convictions of abuse. Therefore, I recommend that such policies be put into place.

In terms of training costs, given the size of school board budgets, it seems likely that the issue is one of providing more flexibility to school boards and not necessarily more funds for this type of training. However, I note that if my recommendations in Phase 2 of this Report are accepted, some money will be available for cross-institutional training in Cornwall and in the United Counties of Stormont, Dundas & Glengarry, through what I have referred to as the Reconciliation Trust. In addition, as part of the forward-looking recommendations in my Phase 2 Report for education across Ontario, I make specific recommendations for enhanced professional training, as well as funding for that training. If these recommendations are adopted, there could be the supports available to the UCDSB that it has indicated it needs to prevent and respond to the sexual abuse of children and young people attending schools in the Board.

Robert Sabourin

Sabourin Hired in 1967

Robert Sabourin was hired in 1967 as a French, theatre arts, and photography teacher by a predecessor board to the Stormont, Dundas & Glengarry County Board of Education. Robert Sabourin taught at La Citadelle High School in Cornwall. Jeannine Séguin was the principal from 1973 to 1981 for La Citadelle and for St. Lawrence High School, when the two schools operated in the same building. The Superintendent responsible for La Citadelle was Jean-Paul Scott.

High School Student C-112 Makes a Complaint

C-112 was a student at La Citadelle High School from grade 10 to grade 13, from 1973 onward. In 1972, he had attended the St. Lawrence High School, in the same building as La Citadelle. The schools operated in shifts in the building until the St. Lawrence High School moved out in the mid-1970s.

C-112 was active in school extracurricular activities, including student radio and local access cable television. He was also an active student photographer. Student photographs could be developed in a school darkroom. The teacher responsible for the darkroom was Robert Sabourin. The room was kept locked and

Robert Sabourin had a key, as did others on staff. C-112 used the room during lunch hours but not after school, as he lived outside Cornwall and had to take a bus home. Usually, he asked Mr. Sabourin to open the room or to give him the key. In 1974–1975, when he was in grade 11, C-112 took a cinematography course from Mr. Sabourin.

C-112 alleged that the first sexual incident with Mr. Sabourin happened when he was taken to Ottawa at age fourteen or fifteen to attend a meeting of the Association canadienne-française de l'Ontario. C-112 was a student representative and Robert Sabourin a teacher representative. C-112 reported that during the drive, under the guise of helping him learn to drive, Robert Sabourin rubbed his thigh. Although C-112 believed that Robert Sabourin was coming on to him, he did not tell anyone about what happened.

Early in the school year 1974–1975, Robert Sabourin is alleged to have sexually assaulted C-112. While they were locked in the darkroom at school, the teacher spoke to C-112 about pictures C-112 had taken but thrown out before developing. These were pictures of him naked. Because there was a picture of C-112's mother in the roll of frames, Robert Sabourin even suggested that she might be accused of taking pictures of her naked son. Robert Sabourin then sexually abused him. While the two were in the room, another teacher tried to open the door but it was locked and she left.

C-112 testified that he was ashamed and scared and did not return to classes but went home. He did not tell his mother what had happened, only that he did not want to return to Robert Sabourin's cinematography class. C-112's mother was upset and called the school. The school sent Father Gary Ostler to speak to C-112 several days later. Father Ostler was not on the staff of La Citadelle, but the priest was often involved in school activities.

C-112 and Father Ostler went for a drive to talk after school and C-112 explained what had happened and why he did not want to return to Robert Sabourin's class. C-112 indicated that Father Ostler told him it did not seem that Robert Sabourin had hurt him and that if C-112 complained, he would ruin the teacher's reputation over "some silliness." On his return to C-112's home, Father Ostler told the student's mother that C-112 was sick, which she did not believe. C-112 remembered that this incident distressed him.

C-112 returned to school but not to Robert Sabourin's class. A few days after Father Ostler's visit, C-112 was called into the office of Principal Jeannine Séguin. C-112 recalled that Vice-Principal Jules Renaud also attended. Principal Séguin asked C-112 to confirm that he had complained about an incident involving Mr. Sabourin and that this was the reason he was refusing to attend Mr. Sabourin's class. C-112 agreed that this was the case, saying Robert Sabourin was a "pervert." Jeannine Séguin asked him if he was prepared to testify in court and C-112 said

he was not ready for the matter to be public and did not want his friends to find out. C-112 did not have his mother or another adult with him during this interview. Principal Séguin said that C-112 could continue his class in the library instead of with Robert Sabourin. He continued as yearbook photographer but the films were developed elsewhere. C-112 testified that he was satisfied with this response and it gave him some closure.

Principal Séguin was interviewed in March 1998 with respect to a civil proceeding of one of the complainants of Robert Sabourin. In her statement, she denied that C-112 had disclosed a complaint about Robert Sabourin to her. Constable Heidi Sebalj also interviewed Principal Séguin in October 1997 for the Cornwall Police Service (CPS) investigation of allegations against Robert Sabourin. Ms Séguin indicated in her interview that after the resignation of Mr. Sabourin, she had asked her vice-principal if he was aware of complainants. He told her that he had heard of him. I believe he was referring here to Mr. Sabourin.

Mr. Jean-Paul Scott, the Superintendent of Education at the time, testified that Albert Morin, a Board member, had told him of the allegations of C-112 in 1976 or 1977. He had provided that information as well to Constable Sebalj in his statement of October 16, 1997. I am of the view that either the principal or the vice-principal or both were aware of the allegations reported by C-112 and that certainly Mr. Scott was aware of the allegations before the CPS investigation.

C-112 sometimes saw Robert Sabourin in the halls at school over the next year. C-112 thought Mr. Sabourin knew of his disclosure because the teacher would make a motion as if, in C-112's words, "he was going to slit my throat." C-112 would tell other students not to go into the darkroom alone with Robert Sabourin.

I have heard no evidence that anyone from the School Board contacted the police or the CAS, although C-112 was only fourteen or fifteen at the time of his reported abuse. At the time, the School Board took no job-related action with Robert Sabourin. Mr. T. Rosaire Leger, Director of Education of the SD&G County Board of Education from 1973 to 1988, testified that on receiving a report of abuse, the Board's practice was to remove any person involved from his or her duties, report to the CAS, and send the person home with pay. He explained that information on the duty to report child abuse was communicated to principals. He also indicated that if complaints involved staff members, the Director of Education and the Board of Trustees were to be informed.

There was a failure to follow Board policy with respect to Robert Sabourin. Jean-Paul Scott testified that he did not report to the CAS or the police, and presumably did not report to the Director of Education or Board of Trustees regarding C-112's complaint because of a "lack of evidence." He also did not make any notation in Robert Sabourin's personnel file. In this, Mr. Scott failed to

take appropriate action in response to an allegation of sexual abuse by teacher Robert Sabourin.

Superintendent Scott also testified that he did not recall any of his teachers receiving training at that time with respect to the handling of allegations of sexual abuse.

Locked Door Discussion

Superintendent Jean-Paul Scott recalled visiting La Citadelle High School on many occasions during the period 1974–1976. He recalled seeing several rooms used by Robert Sabourin and that these rooms had locks on the doors. Mr. Scott said that Mr. Sabourin told him this was necessary to protect developing film. He also recalled that he asked Principal Séguin about the locks and she told him that it was not necessary to have locks on the doors. No steps were taken to remove the locks even though Principal Séguin thought them unnecessary. Superintendent Scott was sufficiently concerned to make inquiries.

Ms Sabourin Visits Principal Séguin

The wife of Robert Sabourin came to visit Principal Séguin in the spring of 1976 and asked that the meeting be kept in confidence. She told the principal that “for the good of the students,” she should not keep Robert Sabourin teaching in her high school. Ms Sabourin told Principal Séguin that she had been told by her son “what was going on” in his father’s classes. In an interview with Constable Sebalj in 1997, Principal Séguin indicated that this was the first time she was aware of any issues with Robert Sabourin.

Ms Sabourin said she had seen pictures of a sexual nature and that her son had told her that her husband was going into the darkroom at school and having sexual relations with students. Ms Sabourin indicated that her husband had confessed to this but then destroyed the pictures.

Jeannine Séguin told Ms Sabourin that as principal she could take no action without proof and that the union (the teachers’ federation) would be an impediment if she had no “written report against him.” Since she had no pictures and Ms Sabourin would not testify, Principal Séguin decided that her only option was for Robert Sabourin to go on sick leave or voluntarily resign.

Principal Jeannine Séguin Negotiates the Resignation of Robert Sabourin

Several days later, Principal Séguin met with Robert Sabourin and discussed his leaving voluntarily. Robert Sabourin submitted his resignation at the end of May 1976. While Principal Séguin indicated in her statement to Constable Sebalj that

the teacher had made no admissions to her, one of the reasons she gave to convince Robert Sabourin to resign was that he would do a service for the students. She also urged him to get medical help, telling him that he was sick.

In 1997, Constable Sebalj of the CPS was investigating allegations made by André Lavoie against Robert Sabourin. In addition to interviewing Principal Séguin, she interviewed Gerald Labreque, head of the French Department at La Citadelle. Mr. Labreque recalled Robert Sabourin telling him that he was taking a sabbatical year because of depression. Mr. Labreque discussed this departure with Principal Séguin, who told him that Robert Sabourin was sick, that he had been caught in a sexual abuse case, that there were incriminating photos, and that this had happened before.

Principal Séguin Meets With Superintendent Jean-Paul Scott

The Superintendent to whom Principal Séguin reported was Jean-Paul Scott. Principal Séguin told Superintendent Scott that Robert Sabourin had resigned. She explained the circumstances of Ms Sabourin's visit, her perspective on the issue of proof, and her negotiation of resignation with Robert Sabourin. Mr. Scott did not report the circumstances of this departure to his Director of Education, Mr. Leger, or to the Board of Trustees for the School Board. The resignation was documented and reported to the Board of Trustees as being by "mutual consent." During the discussion with Mr. Scott, the possible impediment to dismissal represented by union (teachers' federation) intervention was discussed and appeared to be a significant factor in how the departure was handled.

Neither Superintendent Scott nor Principal Séguin contacted the CAS or the police. It was possible that there may have been victims of Mr. Sabourin who were under sixteen. In addition, he was a teacher and therefore an authority figure. Mr. Lavoie, who testified about his experience of abuse, indicated that he thought there could have been thirty to forty victims of Robert Sabourin. In my view, the CAS or the police should have been contacted and the Board and Superintendent Scott failed to take appropriate action by failing to do so.

After Mr. Sabourin left his employment at La Citadelle, Principal Séguin gave him a reference as a good worker and a good teacher. Mr. Sabourin was hoping to work for a community centre in order to develop and run a cinematography centre. This would have potentially given Robert Sabourin access to some of the same type of facilities that he used at La Citadelle to attract and abuse teenagers. The failure to properly manage Mr. Sabourin's departure, by permitting him to resign rather than documenting his behaviour, led to the giving of an inappropriate reference that had the potential to put other organizations and young people at risk.

André Lavoie Reports Allegations of Sexual Abuse by Robert Sabourin

In March 1996, André Lavoie gave a statement to Constable Heidi Sebalj of the CPS, alleging historical abuse by teacher Robert Sabourin.

André Lavoie had attended St. Lawrence High School, in the building that also housed the French-language school La Citadelle. In 1967, when André Lavoie was fourteen and in grade 9, Mr. Sabourin was his French teacher. Mr. Sabourin expressed a personal interest in André Lavoie, encouraging his interests in literature, film, and music. This was attractive to the young student because he had not received such encouragement and interest from his own family. Within a short time, Robert Sabourin began sexually abusing him, and this continued for the five years Mr. Lavoie was in high school. The abuse occurred initially at Robert Sabourin's apartment and then at the school, notably in the locked darkroom or the teacher's locked office. Mr. Lavoie recalled Robert Sabourin saying that the rooms needed locks to protect developing film. Robert Sabourin also abused the young student at the Sabourin home, at the Lavoie home, and in his car.

Mr. Sabourin cautioned the student to say nothing about the sexual abuse because "terrible things would happen to himself and myself." He mentioned that his previous school in Montreal had asked him to leave, citing "sexual innuendoes." Robert Sabourin expressed concern that his activities in Cornwall could "get back to Montreal." An Ontario Municipal and Provincial Police Automation Cooperative (OMPPAC) search by Constable Sebalj located a record showing that Robert Sabourin had been before the courts in Quebec in 1969 in regard to sexual improprieties.

While in school, Mr. Lavoie did not disclose his abuse. However, he wondered why teachers did not challenge the locked doors or ask why a teacher was so frequently in the company of young boys, often alone or at out-of-town meetings or excursions. Other students inquired about Mr. Sabourin's relationship with their fellow student, but Mr. Lavoie turned the questions aside. He testified that he saw other boys coming out of the same room in which Robert Sabourin victimized him. He was convinced that they were also victims of sexual abuse but was paralyzed with fear and shame and could not talk to them.

When André Lavoie was in grade 11 he left school for three months. Although a guidance counsellor called during his absence and spoke to him on his return, no one asked him why he had been so unhappy at school that he had left. If anyone had asked or the school had indicated that they were looking into Robert Sabourin's activities, André Lavoie was convinced he would have disclosed his abuse and got help sooner.

When André Lavoie came forward to the CPS in 1996 and provided evidence of Robert Sabourin's abuse, he had reason to be concerned that his abuser could

be in a position where he had access to young boys. A neighbour told him that Mr. Sabourin was involved in activities at Église St. Felix-de-Valois and wanted to be responsible for training altar boys. Mr. Lavoie had warned Curé Desrosiers about the risk and he had responded, “We’ve always kept an eye on him.”

Robert Sabourin was charged with abusing André Lavoie and others and pleaded guilty, receiving a sentence of two years less a day. The trial of Robert Sabourin is discussed in Chapter 11, on the institutional response of the Ministry of the Attorney General.

As a student, Mr. Lavoie recalled having respect for and liking Principal Séguin. He found it hard to understand why she did not ask questions when she saw him so frequently in the company of Robert Sabourin. Indeed, he would look her in the eye and silently beg her, “Please do something.” He thought if the principal had asked about sexual impropriety with Robert Sabourin, he probably would have opened up. The fact that opportunities to intervene were missed by school authorities is understandably an added source of pain.

Mr. Lavoie pointed out that victims of sexual abuse are often perceived as irritants. I agree that this is unfortunately true and needs to change. Mr. Lavoie’s articulate and moving account of the lifelong impact of abuse for him underlines the serious consequences of sexual abuse of young people.

Primary School Student Alain Seguin’s abuse by Robert Sabourin

Alain Seguin was a grade 7 student at École Jean XXIII in Cornwall. The thirteen-to fourteen-year-old had friends at nearby La Citadelle. These friends introduced him to photography teacher Robert Sabourin in 1973 or 1974.

Robert Sabourin befriended the boy, encouraging his interest in photography and becoming friendly with the Seguin family. Robert Sabourin would meet Alain Seguin during lunch time in his locked office and darkroom, where he would sexually abuse him. Students, teachers, and janitors would see him coming in and out but did not challenge the presence of a younger boy at the school. Robert Sabourin also abused him in his car and took Alain Seguin to Ottawa as a “helper” when Mr. Sabourin took pictures of the inauguration of Archbishop Proulx. The boy was also sexually abused during this trip. Robert Sabourin used his Church connections to deceive Mr. Seguin’s parents as to the legitimacy of his intentions. The abuse continued for about two years, including a period after the complaint of C-112.

Mr. Seguin indicated that he had first disclosed his abuse in 1987, to an officer in the CPS. Approximately one month later, he disclosed at the Royal Ottawa Hospital in conjunction with an assessment and treatment, specifically mentioning Robert Sabourin, a teacher. There was no follow-up to this disclosure. He testified that Staff Sergeant Robert Trottier of the CPS had facilitated this assessment.

Mr. Seguin testified that he had told the officer that a teacher in high school had abused him, but the Cornwall police did not respond to this or institute an investigation. In cross-examination, Mr. Seguin was less clear about his disclosure to Staff Sergeant Trottier. Alain Seguin referred to failures to respond to his disclosures as missed opportunities. I agree with Mr. Seguin.

In 1997, Mr. Seguin called the OPP Project Truth hotline, intending to report his abuse by Robert Sabourin. He was referred to the Cornwall Police Service. He gave a statement on January 26, 1998.

Robert Sabourin was convicted and sentenced to two years less a day plus probation. Mr. Seguin thought the sentence was insufficient because there were several victims. Mr. Seguin noted that no one from the School Board approached him or offered counselling or other services. In this respect the UCDSB failed to provide adequate support services to a victim of abuse.

Adequacy of Response

The response to the complaints of C-112 was inadequate. Principal Séguin and Superintendent Scott should have reported to the CAS and the police. It is the responsibility of the CAS and the police to investigate. Principal Séguin and Superintendent Scott had enough information to make a report and let the appropriate authorities take over. If Robert Sabourin had been removed from his position at the time of C-112's complaint, the abuse of Alain Seguin might have been limited and other victims might have been spared.

When Ms Sabourin came forward, Principal Séguin and Superintendent Scott should have reported to the CAS and police but failed to do so. The school officials had information of serious wrongdoing. They did not have to conduct an investigation; other authorities could have done so. While Ms Sabourin's request for confidentiality was understandable, confidentiality should not be preserved in the face of a risk to students. I note that the current protocol of the UCDSB specifically provides that "in-confidence" and "second-hand" information is reportable. I agree with this policy.

Because the reasons for Robert Sabourin's departure were not properly documented, he left with his teaching qualifications intact, able to relocate and abuse elsewhere. The risk of being challenged by the union (teachers' federation) was given greater importance than it should have received. Dismissals are often grieved, but this does not absolve institutions from following the law or Board practices and policies in place to protect students. The Board's employees failed in fulfilling their managerial duties by not sufficiently disciplining Robert Sabourin and allowing him to resign, and for not advising the Board of the reasons for his resignation.

The response to allegations against Robert Sabourin reinforces the importance of up-to-date written policies and protocols and regular training. Training should include tips to identify inappropriate behaviour by authority figures, such as having a locked office or obscuring the window on an office door, being alone regularly with students, having “favourites,” and giving or receiving special favours. Teachers should also be taught to recognize signs of abuse such as sudden changes in physical appearance, inexplicable anger, or crying. This is the type of preventative training referred to in the Robins Report.

In addition, the USCDB should conduct physical audits and make appropriate changes, such as removing unnecessary locks or putting glass in the doors of offices where teachers may meet with students. Opportunity for observation reduces opportunity for sexual abuse.

Father Gilles Deslauriers

Chaplain at La Citadelle

Roman Catholic priest Father Gilles Deslauriers was the full-time chaplain at La Citadelle High School from 1977 until early 1986. The SD&G County Board of Education paid his salary. It had been the idea of Jeannine Séguin to bring a priest to the school, and she arranged to pay for Father Deslauriers' salary. Principal Séguin expressed confidence in Father Deslauriers and reported that the teachers admired him. Ms Séguin worked for the SD&G County Board of Education from 1970 to 1981 and became a principal in 1973.

Although La Citadelle was a public school, it had a significant Catholic population. At the time of Father Gilles Deslauriers' appointment as chaplain, Bishop Eugène LaRocque of the Diocese of Alexandria-Cornwall wrote a letter noting that more than one hundred French Catholic students attended. Father Deslauriers was encouraged by his Bishop to ensure a Catholic presence at the school and to evangelize future leaders of the country and Church.

Father Deslauriers Leaves the Diocese and La Citadelle

Benoit Brisson and his parents reported allegations of sexual abuse against Father Deslauriers in 1986. These allegations and what happened following the reports of abuse were discussed in Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall.

After the report of the allegations, Father Deslauriers met with Bishop LaRocque and it was agreed that he would leave the Diocese of Alexandria-Cornwall to attend a thirty-day spiritual retreat. Following this meeting, Father Deslauriers went to visit Jeannine Séguin.

After being approached for help, Ms Séguin assisted Father Deslauriers in a number of practical and appropriate ways:

- permitting Father Deslauriers to stay briefly with her and Bishop Proulx's sister, with whom she was living at the time;
- calling Dr. Corbeil to come and speak to Father Deslauriers as she was concerned for his mental health;
- calling Bishop Proulx and arranging for Father Deslauriers to stay "at the cottage";
- taking Father Deslauriers to Montreal for a driver's licence because he had only an Ontario licence;
- asking a lawyer to act for Father Deslauriers; and
- taking Father Deslauriers to a treatment centre in Montreal.

It appears that Father Gilles Deslauriers first told Jeannine Séguin that he had been asked to leave because he had caused a separation between two people. This was probably a reference to Benoit Brisson and his wife, Denyse Deslauriers, as Mr. Brisson's crisis over his recollection of abuse by Father Deslauriers led to the breakdown of his marriage. Later, Father Deslauriers told her that he did not do the things he was accused of by the Bishop. I have heard no evidence that would allow me to determine if Father Deslauriers had formally resigned from his position as chaplain or was on some kind of official leave.

Constable Herb Lefebvre and Sergeant Ron Lefebvre of the Cornwall Police Service interviewed Principal Séguin as part of their investigation into the allegations against Father Deslauriers. She indicated that she had not received any complaints about Father Deslauriers from school students.

Use of Position at La Citadelle

The investigation revealed that Father Deslauriers used his position at La Citadelle to meet students and involve them in activities outside school, leading to the abuse of some students. The activities were generally a combination of youth group and spiritual activities sponsored by the Catholic Church and often involved many students.

While grooming did occur at school, the acts of sexual abuse did not occur on school premises but at the St. John Bosco Rectory, where Father Gilles Deslauriers was a priest in residence.

When knowledge of the sexual abuse emerged in early 1986, following Benoit Brisson's disclosure to his wife and parents, his mother, Lise Brisson, made considerable efforts to contact responsible Church officials in order both to

address past abuse and to avoid future abuse. In March 1986 correspondence to senior officials of the Roman Catholic Church in Canada, she noted that Gilles Deslauriers was the chaplain at La Citadelle and had access to young people, who were vulnerable because of his charismatic personality and the degree of trust reposed in him. It does not appear that the Diocese provided this correspondence to the School Board. Lise Brisson did not contact La Citadelle directly, hoping that the Diocese would deal with Gilles Deslauriers' lack of suitability for the priesthood.

The allegations of sexual abuse by Father Gilles Deslauriers became public in May 1986. I have neither reviewed nor heard evidence that the principal of La Citadelle or the School Board took any action. Before the May 1986 disclosures, it did not appear that the senior management of the School Board had knowledge of or could reasonably have obtained knowledge of the abuse that involved Father Deslauriers. The Diocese had not disclosed the abuse to the School Board or the Children's Aid Society, and the police investigation did not start until late May 1986. By that time, Father Gilles Deslauriers had left La Citadelle.

Failure to Conduct Internal Investigation

Although Ms Seguin was aware in early 1986 that Father Deslauriers had been asked to leave the Diocese for a period of time, it is unclear exactly what information she had at the time and what, if any, information was shared with School Board officials by either the Diocese or Ms Seguin, who had retired from the Board by this time. It seems likely, however, that Board personnel would have known about subsequent media reports stemming from a May 1986 television interview conducted between Lise Brisson and Charlie Greenwell. Ms Brisson testified that she had gone to the media because she was concerned that the Diocese and the Church officials she had contacted were not taking action with respect to Gilles Deslauriers and there had been no response to her correspondence.

In addition, by June 1996, the Cornwall Police Service had made contact with the principal of La Citadelle concerning its investigation into Father Deslauriers. I did not hear any evidence that the principal or the School Board took any action on learning of the police investigation into Father Deslauriers, such as attempting to contact students, helping to find other potential victims, or offering any assistance with counselling.

It is unfortunate that no assistance appears to have been extended to affected students and their families or efforts made to find other students who may have been victims of Father Gilles Deslauriers' actions. In this respect, the pattern of response was similar to that in the Robert Sabourin case in the failure to adequately address the need for services for victims.

Lessons for the Future

The Father Deslauriers case demonstrates the need to develop communication policies and practices to ensure appropriate follow-up after allegations are reported.

Father Gilles Deslauriers was incardinated in the Diocese of Alexandria-Cornwall and was an employee of the SD&G County Board of Education. Although today it may be more relevant for Catholic school boards, I recommend that if a school board permits access to its students by a priest, member of a religious order, or minister or provides a school office, it must be satisfied as to the individual's suitability. It must be clear that if a complaint of sexual abuse is received, the same policies will apply as are in place for teachers, other employees, volunteers, and school bus drivers in terms of any internal investigation or follow-up with alleged complainants.

Nelson Barque

Barque Works Briefly As a Teacher

As discussed in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services, Nelson Barque was a probation and parole officer in Cornwall from 1974 to 1982. He was the probation officer for several young men who reported allegations of sexual abuse.

Some of these victims who reported allegations of abuse against Mr. Barque were of school age. For example, Albert Roy was sixteen, and Robert Sheets indicated that he was eighteen. Before working as a probation officer, Nelson Barque had been a substitute teacher at La Citadelle High School in the SD&G County Board of Education for a month and a half in 1971. He was then a case worker for unemployed individuals at the City of Cornwall, assisting, among others, students from four high schools. Principal Jeannine Séguin was listed as a reference with respect to his 1971 teaching experience. No complaints regarding Nelson Barque have been identified from 1971 or prior.

Incident With Benoit Brisson Reported to Gilles Deslauriers

Benoit Brisson knew Nelson Barque through activities related to the Christ-Roi Parish. Mr. Barque was a communion minister, assisting in the distribution of communion and helping with mass. He was also a family friend.

Mr. Brisson indicated that in 1979 Nelson Barque had shown him heterosexual pornographic movies in his locked office and provided him with alcohol. Benoit Brisson was eighteen at the time and attending high school. Mr. Brisson testified that Nelson Barque was an acquaintance of Father Gilles Deslauriers, who was the chaplain at La Citadelle at that time. Benoit Brisson spoke to Father Deslauriers about the incident but did not report it to others.

Mr. Barque resigned from his employment at the Ministry of Correctional Services in May 1982 following an internal investigation of allegations of his sexual misconduct. He was then employed as a social worker for Équipe Psycho-sociale from 1982 to 1986, interacting with children at two Cornwall area primary schools. He then obtained a one-year supply teaching contract with the Stormont, Dundas & Glengarry County Roman Catholic Separate School Board in 1992. He was subsequently charged and convicted in relation to the sexual abuse of Albert Roy in 1995.

Mr. Barque's history at Équipe Psycho-sociale is described in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services. I noted that Équipe Psycho-sociale should have been informed of the circumstances surrounding his departure from the Ministry. This lack of follow-up also allowed Mr. Barque to obtain employment with a school board.

Jean Luc Leblanc

Disclosure of Abuse Made to Teacher

In January 1986, Jason Tyo and Scott Burgess were students at Central Public School, an English-language public school in Cornwall that was part of the SD&G County Board of Education. At the time, Jason Tyo was thirteen and Scott Burgess was fourteen years old.

They both reported allegations of sexual abuse over several years by Jean Luc Leblanc, a neighbour who worked as a training instructor at Transport Canada. On January 7, 1986, Jason Tyo spoke to his former teacher, Dawn Raymond, about being abused by Jean Luc Leblanc and witnessing the sexual abuse of Scott Burgess. He came to his former teacher because he trusted her and thought she would take action. Ms Raymond had taught both boys in grades 5 and 6 at Gladstone Public School. Jason Tyo testified that a few days earlier, he had called the Children's Aid Society after-hours emergency line regarding his sexual abuse by Jean Luc Leblanc and physical abuse at home, in hopes of stopping the abuse. This call and the response received were discussed in Chapter 9, dealing with the institutional response of the Children's Aid Society.

Dawn Raymond believed Jason Tyo and interviewed Scott Burgess a few days later. Ms Raymond already had some concerns about Jean Luc Leblanc, whom she had met for the first time in late December 1985. On meeting Jean Luc Leblanc, she and her husband wondered why an older man would spend so much time with a young boy like Scott Burgess. They also worried when they realized that he was paying for expensive items such as Scott Burgess' calls to her in Mexico when she was on vacation.

Teacher Dawn Raymond Follows Up

Ms Raymond spoke to Scott Burgess on January 10 and 11, 1986, following Jason Tyo's disclosure. Scott Burgess initially denied the abuse but then opened up and told her what had been happening. He also disclosed that Jean Luc Leblanc was abusing others, including Jason Tyo.

Ms Raymond subsequently told her principal of the information obtained from her discussion with the two students. The principal, Ivan St. John, originally suggested she speak to Dave Hill, a special education consultant. Mr. St. John then contacted the Superintendent responsible for the school, Lorne Lawson. Ms Raymond and Mr. St. John met with Mr. Lawson at the Board's Cornwall office on Second Street. Superintendent Lawson called the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry during that meeting on January 24, 1986, and Bruce Duncan of the CAS came to the Board's office that very afternoon.

Bruce Duncan and Dawn Raymond went directly to Central Public School, where Scott Burgess attended, and withdrew him from class. They asked questions regarding his sexual abuse, including details of specific sexual acts. Mr. Duncan thought Ms Raymond had a good rapport with Scott Burgess so he got her to ask questions, prompting her while sitting behind her and taking notes. Ms Raymond describes this questioning as a painful and difficult experience for the young student.

The CAS also contacted the CPS that same day and the case was assigned to Constable Brian Payment on January 24, 1986. The school had permitted Mr. Duncan of the CAS to interview Scott Burgess on school property but did not permit Constable Payment, indicating that he could not speak to the student without the consent of his parents. Scott Burgess had initially indicated that he did not want his parents to know of the abuse. He was embarrassed and afraid his mother would be angry.

Constable Payment ultimately interviewed Scott Burgess and his brother, Jody, at their home and then took Scott Burgess to the CAS office for another interview. This meant that Scott had to repeat his difficult and painful story on at least three separate occasions.

Constable Payment's investigation revealed that Jean Luc Leblanc had sexually abused Jason Tyo, Jody Burgess, and Scott Burgess. In fact, sister Cindy Burgess was also a victim of Jean Luc Leblanc, although that information did not come out until a later investigation and prosecution. At the end of the day on January 24, 1986, Scott Burgess went home with Dawn Raymond, with the consent of Mr. and Ms Burgess. The police investigation is further discussed in Chapter 6, on the institutional response of the Cornwall Police Service.

Dawn Raymond Feels Ill Equipped to Respond

Dawn Raymond had worked as a teacher in the Cornwall area since 1960. She taught at Gladstone Public School from 1966 to 1988. From 1983 to 1985, she taught a special education class of ten to eleven students; the small class size allowed her to get to know the students well, including Scott Burgess and Jason Tyo.

Teacher Dawn Raymond testified that it was difficult to detect sexual, as opposed to physical, abuse of children as there were no visible marks. She also indicated that she had no training in this area, was not aware of any written policy, and had no prior experience with sexual abuse. Notwithstanding, she acted with concern for the young students. At that time, Board practice was that matters of this nature were to be reported to the school principal. Ms Raymond was evidently aware of this practice and acted on it, although there was some delay before she reported the matter. Principal St. John consulted Superintendent Lawson, who acted appropriately by immediately contacting the CAS.

Despite Board practice, the legal duty to report abuse was a duty to report to the CAS, not to any intermediary. The delay of approximately two weeks in reporting was of concern to the investigator, Constable Payment. He also indicated that he understood the hesitancy of victims to discuss their abuse. It is always desirable to interview individuals as soon as possible.

Relief and Disappointment on Conviction

Ms Raymond, like Scott and Jody Burgess and Jason Tyo, was relieved that Jean Luc Leblanc was convicted. However, she and the boys were all disappointed with the sentence of three years probation. She thought that “[Leblanc] got a slap on the wrist and Scott, Jason and I got a slap in the face.” She felt they had to go through agony for little result. The investigation of Jean Luc Leblanc is discussed more extensively in Chapter 6, on the institutional response of the Cornwall Police Service.

Outcome of the Lack of Clear Policies and Training

I have concluded from my review of evidence that in the case of Jean Luc Leblanc, there was a delay in reporting to the CAS, which could have affected information obtained in the investigation or how the investigation was conducted. It is clear that training regarding duty to report sex abuse was not reaching teachers and principals, such as well-intentioned individuals like Ms Raymond. Both Ms Raymond and Principal St. John first reported to a superior rather than reporting to the CAS directly. This contributed to a delay, although minor.

There was inconsistency regarding the interviewing of students on school premises, as Mr. Duncan from the CAS was permitted to interview at the school but Constable Payment from the CPS was not. As well, Ms Raymond participated in investigative interviews with Mr. Duncan, asking Scott Burgess questions about the nature of sexual acts committed on him, prompted by Mr. Duncan. This created the risk that Ms Raymond, who was not a trained investigator, would ask questions that could compromise future prosecutions or that Mr. Duncan would prompt her to ask such questions.

At the time, Ms Raymond was not aware of any policies governing interviews and school involvement. Although they may have been informally in place, they were not put in writing until 1989.

Mr. Leger and Mr. Dilamarter, Directors of Education during the 1970s, 1980s, and 1990s, testified that obligations regarding the duty to report and the practices of the Board were communicated orally to staff during the 1970s and 1980s. This was often done through briefings with principals, who were to inform their school staff.

However, it does not appear that in the Jean Luc Leblanc case all of the information reached teachers, or even principals. It may be desirable for the UCDSB to circulate periodic questionnaires or conduct audits to determine the extent to which information is reaching staff and the areas in which they need extra training or information.

Leblanc Hired As a School Bus Driver on a UCDSB Route

Private contractors provided school bus services to the UCDSB and its predecessors. The contractors hired and employed drivers. Before 1999, there were no written policies or standards at the UCDSB or its predecessor boards governing school bus operators, although school bus operators were provided with guidelines. A comprehensive written policy, entitled “Standards of Performance for School Bus Operators,” was approved on or about January 11, 1999.

Evans Bus Lines hired Jean Luc Leblanc as a school bus driver around October 1998. Mr. Leblanc told Rory Evans, the owner, that he had been convicted of sexual assault but had received counselling and had been “cured.” Mr. Evans said he was satisfied with the explanation and hired Jean Luc Leblanc.

On January 5, 1999, Jean Luc Leblanc was arrested by the Ontario Provincial Police (OPP) as part of the Project Truth investigation. Mr. Evans contacted the School Board that day and Board officials met with Detective Constable Don Genier of the OPP.

On January 15, 1999, Mr. Marc Shaefer, Director of Human Resources for the UCDSB, wrote to Mr. Evans. He indicated that there was an expectation that

criminal record checks would be completed and that a record of conviction would be a “deciding factor” in hiring drivers and should be discussed with the UCDSB’s transportation officer. Mr. Evans was warned that his transportation contract with the UCDSB could be cancelled if there was a recurrence of the failure to follow Board policy or practices.

In 2001, Jean Luc Leblanc pleaded guilty to offences against several victims over many years, including Cindy Burgess-Lebrun. The offences included acts committed after his 1986 conviction with respect to Jason Tyo. Jean Luc Leblanc was designated a long-term offender and sentenced to a ten-year custodial term. This related investigation and conviction is discussed in Chapter 7, on the institutional response of the Ontario Provincial Police.

The fact that Jean Luc Leblanc was hired as a school bus driver horrified his victims and teacher Dawn Raymond. It could be expected to exacerbate victims’ feelings of distrust in public institutions and seemed to minimize the terrible suffering they experienced.

Policies Not in Place

The UCDSB did not have appropriate policies and practices in place for school bus driver screening at the time of the hiring of Jean Luc Leblanc in 1998. Although the transportation contractor, Mr. Evans, made the hiring decision and the UCDSB was not aware of it, there did not appear to be a system in place to ensure that school bus operators complied with hiring requirements stipulated by the Board. Because contractors are providing a service for which the UCDSB is responsible, the Board must ensure that they adhere to the standards established by the Board.

After the Standards of Performance for School Bus Operators document was adopted, a new draft Transportation Contract, dated April 8, 1999, was circulated. It included a provision requiring that bus operators obtain police criminal record checks of all new drivers prior to employment. A copy of the check must be provided to the Transportation Department. It is hoped that a clearer written policy with explicit requirements regarding criminal records checks will enhance the level of screening being conducted by bus operators and avoid this type of situation occurring in the future.

Mr. David Thomas, Director of Education for the UCDSB, testified that the Board does not have communication policies with respect to providing the public or the community with information after incidents such as the arrest of Jean Luc Leblanc. While no incidents involving students on buses were reported, the lack of a comprehensive policy may mean that potential victims, or those who could have helped such victims, simply never heard about what happened.

The UCDSB should develop policies and procedures for communication to enhance the possibility that students who have been harmed in any way feel comfortable coming forward to obtain help. Openness also sends a positive message to UCDSB staff, students, parents, and the public at large that the welfare of students is of paramount importance.

As was explained by a number of the context experts, sexual abuse is generally underreported. As a result, there may still be victims of abuse by Board employees who have not yet come forward. This is a further reason for the UCDSB to adopt an approach of openness in its communications.

Given that there have been a number of confirmed cases of sexual abuse of young people by employees of the UCDSB, that there have been additional allegations of sexual abuse reported against the Board's employees, as well as the possibility that there are further victims, the Board should make a public appeal and consider making an apology. As a part of its appeal, I recommend that the UCDSB offer counselling and support to any alleged victims of abuse by Board employees who come forward.

Catholic District School Board of Eastern Ontario

Introduction

The Catholic District School Board of Eastern Ontario (CDSBEO) is an English-language separate school board under the *Education Act*.¹¹ It was created in 1998, through the amalgamation of three other school boards.

The newly created school board became responsible for schools in the County of Lanark, the United Counties of Leeds & Grenville, the United Counties of Prescott and Russell, and the United Counties of Stormont, Dundas & Glengarry. These counties include the following municipalities: Cornwall, Brockville, Gananoque, Prescott, and Smiths Falls. The CDSBEO currently operates forty elementary and ten secondary schools for approximately 15,000 students, and employs 850 teachers and 450 support staff.

The predecessor board in the Cornwall area was the English section of the former Stormont, Dundas & Glengarry (SD&G) County Roman Catholic Separate School Board.

Catholic separate schools have been publicly funded since the mid-1980s. Before that they were not fully funded at the secondary level. School boards in the Cornwall area each included a French and an English section until 1997.

Prior to the establishment of the CDSBEO, the French sections of three Roman Catholic boards were amalgamated in 1997 to form the Conseil de District des

11. R.S.O. 1990, c. E.2.

Écoles Catholiques de Langue Française de l'Est Ontarien (C.S.D. 65). That board assumed responsibility for corporate records from the former SD&G County Roman Catholic Separate School Board.

Denominational Rights and Relationship With Diocese and Archdiocese

One of the roles of a Catholic school is to educate students in the faith in partnership with home and parish. As a result, the CDSBEO works with any local diocese or archdiocese of the Catholic Church.

Each of the schools of the CDSBEO is assigned a liaison priest, who works in cooperation with the school chaplain to provide spiritual leadership in schools. Some schools may not have a chaplain. The bishop or archbishop approves any individual appointed as a chaplain or liaison priest.

A diocese or archdiocese provides screening and criminal record checks for priests assigned to schools. The CDSBEO does not receive the “particulars” of the screening or checks but “assurances” by the diocese that appropriate screening has occurred. If a priest is a regular presence in a school and has a role of authority in relation to children or youth, the CDSBEO is responsible for the children and young people and should satisfy itself about the rigour of screening and existence of criminal record checks for priests or members of religious orders active in their schools.

Copies of the criminal record check and any screening information should be provided to the CDSBEO by the responsible diocese or archdiocese or religious order, or the CDSBEO should undertake the task itself. I think such a system is preferable and less intrusive to performing an audit of diocesan records, which is the approach I suggest to school boards for oversight of school bus drivers to ensure that providers of transportation follow school board policies.

I also made a recommendation to the UCDSB that if a minister, priest, or member of a religious order is an employee of a school board, the same reporting and sanctions that apply to other employees, such as school bus drivers and teachers, should apply to these employees. I suggest the same to the CDSBEO.

Section 53 of the *Education Act* provides that a member of the Roman Catholic clergy may visit a Roman Catholic school in the area in which the member has pastoral charge. However, Regulation 474/00 of the *Education Act* also allows a principal to exclude persons from a school if their presence is detrimental to the safety or well-being of a person on the premises.

With respect to Catholic education, the *Code of Canon Law* applies.¹² The *Code* speaks generally of expectations for teachers and curriculum. Dr. Donaleen Hawes, Superintendent of Special Education for the CDSBEO, explained that in practice,

12. *Code of Canon Law*, Book III, Title III, Catholic Education, Cann. 793–806.

the Canon applies only to the approval of religious education programs, family life education programs, and pastoral care programs. The wording of the *Code* suggests that authorities in a diocese can appoint or remove a teacher of religion. Dr. Hawes clarified that the local bishop does not appoint or approve teachers of religion; this is done by the CDSBEO. If a teacher were removed under the Canon, it would not be from employment but from the teaching of religion.

At a day-to-day level, the involvement of priests and other religious personnel in schools may extend to liturgical celebrations, preparation for confirmation or First Eucharist, pastoral care in difficult situations or crisis, and evangelization. It can include arrangements for confession in the Advent or Lenten seasons. Priests, deacons, lay pastoral assistants, and others may function as role models for students, demonstrating conduct and attitudes consistent with the values of the Roman Catholic faith.

Section 93(3) of the *Constitution Act* provides for certain protections of denominational rights in relation to the provincial authority to act in the area of provincial jurisdiction such as education. In making recommendations to the CDSBEO, I have considered these protections.

Teachers Charged or Convicted of Sexual Offences Related to Minors

The duties of the CDSBEO under the *Education Act*¹³ include the following: “[U]pon becoming aware that a teacher is charged with or convicted of an offence related to sexual conduct and minors” or of any other offence that indicates “pupils may be at risk,” to ensure that the teacher performs no classroom duties and has no contact with pupils, pending the withdrawal of any charges, discharge, stay, or acquittal.

The Ontario College of Teachers Act, 1996,¹⁴ stipulates that an employer must provide a written report to the College of Teachers if:

1. an employer terminates a teacher or imposes restrictions on duties for reasons of professional misconduct;
2. an employer intended to take action related to professional misconduct but the employee resigned before action was taken; or
3. an investigation into misconduct is ongoing and the teacher resigns before completion of the investigation.

This report by an employer must be filed with the Registrar of the College within thirty days of the termination, restriction, or resignation, stating the nature of

13. R.S.O. 1990, c. E.2, s. 170(1)(12.1).

14. S.O. 1996, c. 12, s. 43.2.

the circumstances. In particular, the statutory provisions for reporting to the College say that there should be a “prompt” report if there is a charge or conviction involving sexual misconduct and minors or some other offence that could expose students to harm or injury.¹⁵

If the Ontario College of Teachers takes disciplinary action against a teacher, it must inform the employer.¹⁶ The College has a process to investigate and hear a matter and to impose discipline, including revoking a certificate. Teachers who do not have a certificate or letter of permission cannot work as teachers. A school board is not a party to these proceedings. In my view, the existence of an investigative process at the College of Teachers does not absolve school boards from conducting their own internal investigation to determine whether an individual should remain in a teaching capacity following allegations of misconduct.

Before the creation of the College, the Ontario Teachers’ Federation administered professional discipline.

Criminal Record Background Checks

Pursuant to Regulation 521/01 under the *Education Act*, which became effective January 1, 2002, a “personal criminal history” is collected by the CDSBEO for each employee and service provider. School boards were given until July 2003 to complete this work, and an annual offence declaration from CDSBEO employees regarding criminal history has been required since 2004. The CDSBEO indicates that directly or indirectly, it now checks all teachers, staff, volunteers, chaplains, priests, and bus drivers. Before 2001, it did not have a policy to collect a record of offences. I have already discussed the issue of reliance on checks done for priests or members of religious orders earlier in this chapter.

Relevant Policies or Protocols

Child abuse protocols were in place between 1986 and 2002 in the boards that ultimately amalgamated to form the current CDSBEO. They were revised in 1993 following 1988 changes to the *Criminal Code* and the development of revised standards for investigation and management in 1992.

The 1986 and 1988 protocols in place in the SD&G County Roman Catholic Separate School Board were substantially similar to the 1989 protocol for the public board. The Catholic board also had a policy in place during the 1980s and 1990s that an employee with “well founded suspicions” should report to his or her principal or designate, not directly to the Children’s Aid Society (CAS).

15. *Ontario College of Teachers Act*, 1996, S.O. 1996, s. 43.3.

16. *Ibid.*, s. 43.4.

Under this policy, the principal was then to “gather information and insight” and report if there were reasonable grounds for suspicion. The policy provided that only if the principal did not act and the employee still had suspicions of abuse did the employee report directly to the CAS. The policy also stated that any suspicion regarding teachers or staff members must be put in the hands of a Superintendent and Director to ensure impartiality, i.e., the follow-up to any report would not be conducted by the principal. This rule was confirmed and clarified in 1988. The original wording said that the protocol was “to be put in the hands of the Superintendent/Director,” and the 1988 version specified that “the Superintendent or Director will conduct the necessary investigation in lieu of the principal.”

This policy remained in place until 2002, when the CDSBEO approved the *Child Protection School Handbook* currently in use. That handbook clearly indicates that professionals must immediately report to the CAS and, for those sixteen and over, to the police. The professional making the report must also inform his or her principal or designate of this report.

Like those of the UCDSB, the policies in place at the CDSBEO for reporting abuse of students aged sixteen and older are neither as detailed nor as complete as for those under sixteen and do not deal with reporting to the CAS. I recommend that the CDSBEO review policies for reporting abuse or suspicions of abuse for older students. There is always the possibility that if there is sexual abuse of students over sixteen, there could have been abuse of younger students, which must be considered. There is also the possibility that a student was abused by a person in a position of authority, which might involve criminal charges even for older students.

Relevant Training

The CDSBEO summarized available training in respect to the duty to report abuse and to comply with protocols:

- Principals should review CAS protocols with staff early in each school year.
- Crisis and student support workers receive specialized training and in turn train administrative staff.
- There is a yearly presentation to school bus drivers.
- If there is legislative change, special training is provided for all staff.

The CDSBEO recommends that more adequate funding for training be provided by the Ministry of Education and would like to have a consistent training panel (e.g., police, CAS, CDSBEO crisis workers, etc.) and to be able to train everyone at the CDSBEO annually. Care for Kids and RespectedED are programs currently

offered to students in the CDSBEO. Care for Kids is aimed at younger children (i.e., preschool, junior and senior kindergarten, and slightly older children).

In terms of training costs and provision of funds for that purpose, the same issue was raised by the Upper Canada District School Board. Given the size of the school budgets, it seems likely that at least part of the issue is one of providing more flexibility to school boards and not necessarily more funds for this type of training. However, I note that if my recommendations in Phase 2 of this Report are accepted, some money will be available for cross-institutional training in Cornwall and in the counties of Stormont, Dundas & Glengarry, through what I have referred to as the Reconciliation Trust.

In addition, as part of the forward-looking recommendations for education across Ontario in my Phase 2 Report, I make specific recommendations for enhanced professional training, as well as funding for that training across Ontario. If these recommendations are adopted, the supports the CDSBEO has indicated that it needs to prevent and respond to the sexual abuse of children and young people attending its schools will be available.

Marcel Lalonde

History As a Teacher

The SD&G County Roman Catholic Separate School Board hired Marcel Lalonde as an elementary school teacher in 1969. He first taught grades 7 and 8 at Bishop Macdonell School in Cornwall. Starting in the 1987–1988 school year, Mr. Lalonde was placed at Sacred Heart School in Cornwall, where he taught until the end of 1997.

In January 1997, Marcel Lalonde was charged with the July 1973 indecent assault of C-68. He was removed from his teaching duties that same month and, pursuant to established Board policy and practice, continued to receive full pay, pending the progress of charges in the courts or review by the School Board. In the spring of 1997, the Board was informed that Marcel Lalonde had been charged with additional offences. His resignation, given on October 27, 2000, but effective September 30, 2001, was accepted by the CDSBEO on November 21, 2000.

Marcel Lalonde was convicted of sexual offences in regard to four individuals on November 17, 2000. Some of these convictions related to former students of Mr. Lalonde. On May 3, 2001, Marcel Lalonde was sentenced to a term of incarceration of two years less a day.

Complaints First Made in 1989

In January 1989, Constable Kevin Malloy of the Youth Bureau of the Cornwall Police Service (CPS) commenced an investigation into several allegations of sexual abuse by former students regarding Marcel Lalonde. Following his

investigation, Constable Malloy did not lay any charges against Mr. Lalonde but instead placed the file in abeyance. He did not contact the CAS or the school board where Marcel Lalonde was employed as a teacher. This investigation is discussed in detail in Chapter 6, on the institutional response of the Cornwall police.

Allegations by David Silmsner Against Marcel Lalonde

In November 1993, David Silmsner disclosed to CAS staff members Greg Bell and Pina DeBellis that he had been sexually abused by Marcel Lalonde, a teacher at Bishop Macdonell School, when he was thirteen and fourteen years old (1971 or 1972) and in grade 8. He provided further details of this allegation to the Ontario Provincial Police (OPP) in February 1994. The OPP advised the CPS of David Silmsner's allegations but did not provide any detail. These facts are more fully described in the CAS and OPP chapters.

Neither the CAS nor the two police services provided any information to authorities at Bishop Macdonell School or Sacred Heart School or to the SD&G County Roman Catholic Separate School Board.

Further Allegations Against Marcel Lalonde

In October 1996, probation officer Sue Lariviere reported to the CPS that C-68, who was in custody at the Cornwall jail, had told her that Marcel Lalonde had sexually abused him. C-68 told Ms Lariviere that he had been repeatedly sexually abused while a twelve-year-old student in grade 7 at Bishop Macdonell School. The alleged abuse occurred during summer camping trips in the summer of 1973.

This investigation was ultimately placed in the hands of the OPP because the location of the camping trips placed the case within their jurisdiction. However, Constable René Desrosiers of the Cornwall Police Service also contacted Mr. Lynden of the SD&G County Roman Catholic Separate School Board on October 30, 1996, and told him the OPP would be investigating the matter. Constable Desrosiers testified that Ms Lariviere had also contacted Mr. Lynden.

In January 1997, Constable Desrosiers received disclosure from C-45 that Marcel Lalonde had sexually assaulted him and his brother. The brother indicated that Marcel Lalonde had given him alcohol and abused him when he was about sixteen or seventeen, and again about one year later. The brother indicated to Constable Desrosiers that he had been a student in Marcel Lalonde's grade 8 class at Bishop Macdonell School in 1970. He reported that Mr. Lalonde was also a deacon at St. Columban's Church, attended by the family. When interviewed by the OPP, Marcel Lalonde acknowledged he was involved with the

parish, but not as a deacon. One of the brother's motivations for reporting was concern for a young cousin who was in Marcel Lalonde's class.

C-45 said he had also been a student of Marcel Lalonde. He also related that Marcel Lalonde had invited him to his home, given him alcohol, and when he passed out, sexually assaulted him. This occurred repeatedly. As well, C-45 reported that Mr. Lalonde had nude pictures of him.

In February 1997, Sergeant Brian Snyder of the CPS took a videotaped statement from C-8 regarding abuse by Marcel Lalonde. He also contacted C-66, who said that Marcel Lalonde had sexually assaulted him. Sergeant Snyder also spoke to C-58 regarding Mr. Lalonde.

On April 29, 1997, Constable Desrosiers arrested Marcel Lalonde and searched his residence. On April 2, 1998, he received confirmation from the CDSBEO regarding the attendance of some of the complainants at Bishop Macdonell School while Marcel Lalonde had been a teacher. The list included C-68.

At roughly the same time as the Cornwall Police Service was investigating Marcel Lalonde for incidents in Cornwall, he was being investigated by the OPP in regard to the alleged sexual abuse of the former student, C-68, who had initially disclosed to Ms Lariviere. The OPP charged Marcel Lalonde with indecent assault with respect to this individual on January 7, 1997. They had informed Ms Bunny Warner, Superintendent of Education at the SD&G County Roman Catholic Separate School Board, of the pending charges the previous day.

The original trial date for Mr. Lalonde was October 1999 but it was postponed to September 2000. Marcel Lalonde was convicted on November 17, 2000, in regard to four complainants: C-45, C-8, C-66, and one other individual.

Response by School Authorities

Although investigations of teacher Marcel Lalonde had occurred in the 1989–1994 period, the first notice that the SD&G County Roman Catholic Separate School Board received regarding the case was in October 1996, with the communication from probation officer Sue Lariviere and Constable Desrosiers.

This was followed shortly by communication on January 6, 1997, from the OPP regarding a pending charge against Marcel Lalonde. Mr. Lalonde did not attend school on January 7, 1997. He was told not to report for work until further notice. On January 8, 1997, Carolina Willsher, Manager of Human Resources for the SD&G County Roman Catholic Separate School Board, contacted Marcel Lalonde to advise him of a meeting the next day at the Board office. He was informed that he would receive a letter relieving him of his teaching duties. He was told that he could bring a representative of his certified bargaining agent, the Ontario English Catholic Teachers Association, and he did so. At the meeting, he was given a

letter that relieved him of his teaching duties but continued his pay. He was told that he would be advised of any additional steps the Board might take after further review.

The Board received a faxed copy of the charges from Detective Constable Don Genier of the OPP. Those charges related to an incident involving C-68 and Marcel Lalonde at a Charlottenburgh campsite in July 1973. The name of C-68 was disclosed on the face of the charge. Marcel Lalonde denied these allegations and asked for reassignment within the Board. This was not granted.

On April 1, 1997, Carolina Willsher spoke to Detective Constable Genier of the OPP and he told her there was a possibility of further charges being pursued by the Cornwall Police Service. Ms Willsher subsequently contacted Sergeant Snyder, who said he would keep her informed. Shortly thereafter, the CPS Sergeant contacted Carolina Willsher and told her that Marcel Lalonde had been arrested and charged with sixteen counts of sexual assault. A Board employee obtained copies of these additional charges from the courthouse, but the names of those victims were blacked out.

On May 16, 1997, Ms Willsher met with Marcel Lalonde and his bargaining agent, but the union representative indicated that Mr. Lalonde, on the advice of his lawyer, would not answer some of the Board's questions.

On October 27, 2000, Marcel Lalonde submitted his resignation, effective September 30, 2001. I assume that this would entitle him to benefits until the effective date. It was accepted by the CDSBEO on November 21, 2000.

Marcel Lalonde was convicted of sexual offences in regard to four complainants on November 17, 2000. The CDSBEO notified the Ontario College of Teachers of this conviction on November 28, 2000, one week after accepting Marcel Lalonde's resignation effective September 2001. The Ontario College of Teachers' Discipline Committee found Marcel Lalonde guilty of professional misconduct and his certificate of qualification and registration was revoked in February 2002. By that time, Marcel Lalonde had already retired.

The CDSBEO acted appropriately in removing Marcel Lalonde from teaching duties immediately on receipt of news of charges. I have considered whether they might have acted earlier, in October 1996, knowing of an ongoing investigation. At that time, however, they had very little information from the police and had not received a report from a student, parent, or the CAS.

The *Ontario College of Teachers Act, 1996*,¹⁷ provides that an employer must report promptly to the College if there is a charge or conviction that involves sexual misconduct and a minor. It is not clear whether the CDSBEO reported Mr. Lalonde's arrest and charges to the Ontario College of Teachers or whether

17. S.O. 1996, c. 12, s. 43.3.

it waited for a conviction to be obtained. I am of the view that the Board should immediately submit a report when a teacher is charged with a sexual offence.

The CDSBEO was provided by the OPP with a copy of the charges against Marcel Lalonde, which indicated that those related to C-68 were sexual and involved a minor, and the name of this complainant was on the charge. In April 1998, the CDSBEO provided a record to CPS Constable Desrosiers showing that Marcel Lalonde had taught C-68 and also providing information on the dates of attendance at Board schools of other male students who were complainants with respect to Marcel Lalonde.

The Board of Trustees accepted Marcel Lalonde's resignation on November 21, 2000, making it effective on his early retirement date, as Mr. Lalonde had requested. Although Marcel Lalonde was convicted on November 17, 2000, he remained a CDSBEO employee until September 1, 2001, albeit without pay, including during a period in which he was serving a sentence of incarceration.

The CDSBEO does not have any policy regarding termination of employees who are convicted of criminal offences. Each case is considered on a "case-by-case basis." If a teaching certificate is revoked, however, termination of a teacher is automatic since a teacher must have a certificate or a letter of permission in order to teach.

The CDSBEO should develop a policy to address discipline or termination of convicted or charged employees. It has accountability as an employer and should not just wait for action by the College or the courts. There could be some delay between court decisions and action by the College of Teachers. In addition, even if an individual is acquitted of criminal charges, an internal investigation or review by the School Board could result in a decision that the individual is not a suitable teacher.

Gilf Greggain

Greggain's Career As a Teacher

Gilf Greggain started teaching at the SD&G County Roman Catholic Separate School Board in October 1967. He taught at St. Peter Catholic School and reported to the school principal, Percy Beaudette. In 1971, he transferred to St. Anne's Catholic School. These were both elementary schools.

In September 1987, Gilf Greggain took a leave of absence from his teaching position and resigned the following summer. A decade later, he was re-hired by the SD&G County Roman Catholic Separate School Board. In 1998, as a result of an amalgamation of school boards, he became an employee of the Conseil de District des Écoles Catholiques de Langue Française de l'Est Ontarien (C.S.D. 65). In April 1998, he transferred to the Catholic District School Board of Eastern Ontario.

Gilf Greggain was absent on sick leave from January 22, 2001, and did not return to his employment. The Ontario College of Teachers suspended Mr. Greggain's certificate of qualification as a teacher on April 30, 2003, for non-payment of fees.

Marc Latour Reports to Project Truth

On June 19, 2000, Marc Latour called the OPP Project Truth hotline. He reported that Gilf Greggain, his grade 3 teacher at St. Peter Catholic School, had abused him in 1967. The case was referred to the CPS. Constable Carroll of the CPS conducted a videotaped interview of Mr. Latour. This investigation is discussed in Chapter 6.

Mr. Latour testified that Mr. Greggain had unnecessarily kept him after school. He indicated that the abuse had escalated over time from physical abuse to sexual abuse. Mr. Latour testified that after a particularly harsh incident, he had told his father, who confronted Gilf Greggain, telling him to stop the physical abuse.

After this incident, Marc Latour did not immediately return to school. He testified that there was a meeting with his mother, Principal Beaudette at St. Peter, and himself. The principal promised that Gilf Greggain would not hurt Marc Latour in future and the student was returned to his class. The abuse stopped. During this interview, Principal Beaudette asked about physical abuse but made no inquiry about sexual abuse. He also did not ask about the severity of the abuse.

Marc Latour also reported that his grade 2 teacher, Ms Gosselin, had confronted Gilf Greggain about the abuse. She did this in the classroom, possibly in front of other students. Ms Gosselin said that she would report Gilf Greggain to the School Board. I have heard no other evidence that would allow me to determine that it was reported.

I have heard no evidence suggesting that the CPS informed the CDSBEO that the former teacher, Mr. Greggain, was under investigation or that the matter had been reported to the Children's Aid Society.

Response of School Authorities

The incidents that Marc Latour reported occurred in 1967. Regrettably, there is very little documented information from this period. Today, I understand that there would be action taken following a report of either physical or sexual abuse. The policy of the CDSBEO is to report allegations of abuse to the CAS. Teachers have a similar obligation. Pursuant to the current CDSBEO policy, teachers who are investigated for physically or sexually abusing children are removed from the classroom.

Lucien Labelle

Allegations Reported Against Principal Lucien Labelle

The principal of École Marie Tanguay was Lucien Labelle. This elementary school was in the French-language section of the SD&G County Roman Catholic Separate School Board.

In 1985, the Cornwall Police Service conducted an investigation regarding Mr. Labelle. There were ten alleged female victims, aged ten to twelve years. The complaints regarding the principal came to light when several girls disclosed incidents to the vice-principal. The investigation started in March 1985, and Mr. Labelle was charged in June 1985. Mr. Labelle was suspended with pay when the investigation started and without pay in June 1985.

Mr. Labelle was acquitted of the charges in January 1986. He testified and denied touching students inappropriately. The Crown appealed, but the acquittals were upheld.

A better understanding of the institutional response in the case of Lucien Labelle could have been useful for this Inquiry. It appears that the relevant school authorities made a determination regarding Principal Lucien Labelle's fitness to continue as an employee of the Board, independently of the outcome of any prosecution. After first suspending him with pay, they suspended him without pay—which Mr. Labelle referred to as being “fired”—in discussions with Constable Brian Payment of the CPS, who was investigating the case. It appears that Mr. Labelle did not return to his employment at the School Board. This suggests that the Board may have conducted its own review of the situation.

Lack of Information

This Inquiry had difficulty in obtaining full information on the Lucien Labelle case. The French-language section of the former school board did not become part of the current Catholic District School Board for Eastern Ontario (CDSBEO) in 1998, and Mr. Labelle's school was in the French section of the predecessor board. The French section became part of the Conseil Scolaire de District des Écoles Catholiques de Langue Française de l'Est Ontarien (C.S.D. 65). The CDSBEO indicated it could not assist this Commission by obtaining records or by identifying individuals who might have recollection of the case because another school board that was not a party to this Inquiry had responsibility for related records following reorganization.

However, the Upper Canada District School Board provided information related to La Citadelle. Since 1997, La Citadelle has also been part of the French-language Catholic school board, the Conseil Scolaire de District des Écoles

Catholiques de Langue Française de l'Est Ontarien (C.S.D. 65). In 1989, it had been transferred to a Catholic school with both French- and English-language sections.

I am concerned that those legitimately pursuing information about historical sexual abuse may find navigating the processes to obtain information difficult, due to complex reorganizations. The CDSBEO should develop protocols with the Catholic French-language boards and the public boards for dealing with information requests, with a view to ensuring accountability for provision of information and respect for the legitimate needs of those seeking information.

As I indicated earlier in my discussion of the UCDSB, sexual abuse is generally underreported. As with the UCDSB, there may be victims of the CDSBEO who have not yet come forward. For this reason, in addition to both the confirmed cases, and additional allegations of sexual abuse of young people by employees of the CDSBEO, the Board should make a public appeal and consider making an apology. As with the UCDSB, I recommend that the CDSBEO offer counselling and support to any alleged victims of abuse by Board employees who come forward.

Recommendations

Policies, Procedures, and Protocols

1. The Boards should implement or augment existing policies, procedures, and protocols related to the abuse of children and young people to address the following issues:
 - discipline or termination of employees charged with or convicted of sexual offences;
 - the preparation of communications plans that provide direction on information sharing to Board staff, students, parents, and the public at large following disclosure, charges, or convictions related to incidents of abuse. These plans should balance the rights of the alleged victims to privacy with the broader public interest of encouraging other alleged victims to come forward and to receive support.
2. The Boards should implement or augment existing policies, procedures, and protocols to address the following issues pertaining to circumstances in which the alleged victim of sexual assault/abuse¹⁸ is sixteen years of age or older:
 - reporting to the Children's Aid Society in appropriate circumstances, such as when there are concerns that the alleged offender has continued access to children and young people;
 - the response to sexual misconduct by Board employees, volunteers, or others associated with the school.
3. The Boards should ensure that all policies, procedures, and protocols related to the abuse of children and young people are regularly updated. These updates should occur triennially and more frequently if needed to reflect legislative change.

Training

4. The Boards should offer training about sexual abuse that includes information on how to identify inappropriate patterns of behaviour by authority figures.
5. The Boards should circulate periodic questionnaires to staff to ascertain the extent to which information on policy and

18. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

procedures on sexual abuse are understood and where to focus training needs.

6. It is important that Board employees and volunteers receive training regarding their statutory reporting duties to the Children's Aid Society under the *Child and Family Services Act* to ensure that children at risk are protected.

Physical Audits

7. The Boards should ensure that physical audits of their schools are conducted. The focus of these audits would be to make appropriate changes to reduce the opportunity for sexual abuse by removing unnecessary locks or putting glass in office doors to facilitate observation.

Transportation Providers

8. The Boards should continue to conduct periodic audits of transportation providers to ensure they comply with Board policy on the screening of school bus drivers.

Information Requests

9. Given the reorganization and/or amalgamation of school boards, the Boards operating within the United Counties of Stormont, Dundas, and Glengarry should develop protocols for dealing with information requests on historical incidents, with a view to ensuring accountability for the provision of information and respect for the legitimate needs of those seeking information.

Screening and Hiring Persons With Access to Board Schools

10. The Boards should ensure that they receive copies of criminal record checks and any screening information for priests or members of a religious order, counsellors, psychologists, and other professionals who are regularly present at Board schools. Additionally, as a minimum, a yearly declaration of criminal record should be obtained.

11. If the Board pays the salary of a priest, member of a religious order, or other religious representative, counsellor, psychologist, or other professional, or provides a school office to such a person, it should satisfy itself as to the suitability of this person, and ensure that, in the event of a complaint of sexual abuse, the same policies apply as are in place for teachers, other employees, volunteers, and school bus drivers, in terms of reporting and removal from or restriction of duties pending resolution of the complaint.

Public Appeal and Apology

12. The Boards should make a public appeal, urging any victims of sexual assault/abuse to come forward. Given that there have been a number of confirmed cases of sexual assault/abuse of young people by employees of the Boards, that there have been many other allegations of sexual assault/abuse of young people reported against the Boards' employees, and it is known that sexual assault/abuse is generally underreported, it is likely that there are still victims of sexual assault/abuse within the Cornwall area who have not yet come forward. Therefore, the Boards should convey the message that any individuals who come forward with allegations of sexual assault/abuse will be treated with respect, dignity, and compassion. The Boards should offer counselling and support to any alleged victims of sexual assault/abuse who come forward.
13. The Boards should consider making a public apology to all confirmed victims of sexual assault/abuse of young people by an employee of the Boards and that this apology be delivered by the Director of Education of each Board. Given that the *Apology Act*, which came into force in Ontario in April 2009, allows institutions to make apologies without admitting civil liability, it is also recommended that the Boards consider extending such an apology to alleged victims who have reported allegations that have not been confirmed through a civil or Board process and to victims and alleged victims who have either opted not to come forward or who are yet to come forward.

Recommendations for the Boards and Other Public Institutions

Child Protection Protocol, 2001

14. The Boards are partners in the Child Protection Protocol: A Coordinated Response in Eastern Ontario (July 2001). Since this protocol has not been updated, the Boards should meet as soon as practicable with other partners to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on the sharing of information between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

Institutional Response of the Ministry of the Attorney General

Introduction

The Attorney General for Ontario, a member of the Cabinet and an elected member of the Ontario legislature, heads the Ministry of the Attorney General. The authority of the Attorney General with respect to all matters related to the administration of justice is found in section 5 of the *Ministry of the Attorney General Act*. The chief public servant in the ministry is the Deputy Attorney General. Several departments report to the Deputy Attorney General through Assistant Deputy Attorneys General accountable for divisions such as Court Services, Legal Services, Policy and Corporate Services Management, Victim Services, and Criminal Law.

The office of the Attorney General predates Confederation and has its roots in the British legal system. In 1972, the Ontario Department of Justice was divided to create the Ministry of the Attorney General and the Ministry of the Solicitor General (now the Ministry of Community Safety and Correctional Services); the latter was given responsibility for the law enforcement functions that had been included in the Department of Justice.

Responsibilities of the Criminal Law Division and the Role of the Crown

The Criminal Law Division has twelve branches. For the purposes of this Report, eight are relevant: the Crown Law Office—Criminal, the Criminal Law Policy Branch, and the six regional Directors of Crown Operations.

The Crown Law Office—Criminal is responsible for appellate work and has some trial counsel who conduct complex or high-profile trials. This branch also conducts prosecutions of justice-related officials, such as police officers. The Criminal Law Policy Branch was established in 2001 and provides policy guidance to Crown prosecutors on the exercise of Crown discretion. It is also responsible for

creating and updating the Ontario Crown Policy Manual, which contains directives and guidelines for Crown counsel, and for advising Crown attorneys on case law or statutory change affecting their responsibilities. This branch provides advice on criminal law policy, such as potential changes to the *Criminal Code*.

There are six Directors of Crown Operations. The approximately fifty-four Crown attorneys in Ontario report to these regional Directors. The Crown attorney for Stormont, Dundas & Glengarry reports to the Director of Operations for the Eastern Region. Crown attorneys have assistant Crown attorneys who in turn report to them. Crown attorneys and assistant Crown attorneys provide legal representation for criminal matters under the *Criminal Code*, the *Youth Criminal Justice Act*, and other federal statutes. Crown attorneys prosecute a wide range of offences, including fraud, domestic violence, child abuse, sexual assaults, impaired driving, robberies, and homicides.

The Attorney General has authority for criminal prosecutions under section 2 of the *Criminal Code*. Authority is delegated from the Attorney General to Crown attorneys under section 10 of the *Crown Attorneys Act*, whereby Crown attorneys become agents of the Attorney General for the purposes of prosecutions under the *Criminal Code*.

Crown attorneys and other agents of the Attorney General are independent of partisan political influence, but the Attorney General has the legal authority to give direction to Crown attorneys in particular cases or to personally intervene in a prosecution. It is unusual for the Attorney General to have direct involvement in individual cases, given the danger of allegations of political interference and the high volume of cases in Ontario.

Crown attorneys have a responsibility to see that justice is done in individual cases. The role of the Crown is articulated in the 1954 Supreme Court of Canada *Boucher* decision, which states that the purpose of a criminal prosecution is not to obtain a conviction but to put credible information forward. Crown attorneys have duties to the public, victims, witnesses, and accused persons. Rule 4(3) of the Rules of Professional Conduct of the Law Society of Upper Canada explains that the prosecutor's duty is not to seek to convict, but to see that justice is done through a fair trial of the merits of the case.

Crown counsel have broad areas of discretion to ensure prosecutions are carried out in a way that is consistent with the public interest and that there is justice in individual cases. The Supreme Court of Canada has ruled that discretion is essential to the criminal justice system, in that it would be “unworkably complex and rigid” were police and prosecutorial discretion not exercised.¹

Today, approximately 900 Crown counsel work in the Criminal Law Division, sixty-three of whom were hired in the 2004–2006 period as part of efforts to

1. *R. v. Beare* (1988), 45 C.C.C. (3d) 57 SCC at 76.

ensure infrastructure for case management, and bail and remand best practices. In Cornwall, there is a Crown attorney with eight full-time assistant Crown attorneys and three per diem lawyers reporting to him. This compares to the period 1974 to 1991, when there were two assistant Crown attorneys reporting to Crown Attorney Don Johnson.

Crown attorneys are given training and resource materials specific to their responsibilities. This includes programs for those starting out as assistant Crown attorneys. This training for newer Crown counsel includes training on the respective roles of the police and Crown counsel. Usually Crowns attend at least one week of “summer school”; there are also spring conferences and fall regional conferences. The sexual assault prosecutor conference, which began in 1994, includes panels on historical sexual assault, but there is otherwise no specific training on dealing with historical cases of child abuse. Some Crowns participate in annual conferences with the Victim/Witness Assistance Program; the topic focus is usually domestic violence but sometimes includes child and sexual abuse. Those working in the Crown attorney system also receive practice memoranda, a monthly newsletter, and, since 2000, an update on appellate decisions.

The Crown Policy Manual states that Crown counsel should participate in police training but does not provide for joint training.

Child Abuse Coordination, Victim Services, and Child-Friendly Courts Provided by the Ministry of the Attorney General

In or around 1988, the Ministry of the Attorney General developed a policy whereby a Crown counsel in each Crown Attorney’s Office was designated as a Child Abuse Coordinator. He or she would receive training to act as a resource and mentor for other Crowns and as the contact for any Victim/Witness Assistance Program in the jurisdiction. The 1994 Crown Policy Manual indicated that the local coordinator should handle the most serious cases of child abuse. A province-wide coordinator position was created, who was also counsel to the Victim/Witness Assistance Program. Today, the policy states that the Crown attorney in each jurisdiction “should” designate an experienced, trained, full-time Crown as the local Child Abuse Coordinator.

Some areas, such as Toronto, have a designated child abuse court with a “child-friendly” court. Child-friendly courts have closed-circuit equipment, booster seats, microphones, and other testimonial aids. There are such courts in eight or more locations in Ontario, such as in Chatham and Peel, but those testifying on behalf of the Ministry of the Attorney General did not know if Cornwall was one of those locations. The Court Services Division is responsible for child-friendly courts and provisions of testimonial aids such as screens.

At one time, the Victim/Witness Assistance Program (VWAP) was part of the Criminal Law Division. It has been part of the Victim Services Secretariat

of the Ministry of the Attorney General since 2001. VWAP was established in Cornwall in October 2001.

The Basic Course of Prosecution of an Offence—Who Does What and When

The process of a criminal charge begins with a police investigation, which may include interviewing potential witnesses, gathering evidence, executing search warrants, and wiretaps. The processes outlined here represent the procedures in place today; subsequent sections explain the introduction over time of various policies and processes affecting the usual course of a prosecution in Ontario.

The police have responsibility for selecting the applicable charge and deciding whether an individual should be charged with a criminal offence. While some Canadian jurisdictions require Crown attorneys to be involved in pre-charge approval and screening, Ontario does not. There are some cases in which consent of the Attorney General is required before proceedings can be commenced, such as with *Criminal Code* provisions related to sex tourism or public nudity. Once a police officer decides that there are “reasonable and probable grounds” to believe the individual investigated committed an offence, he or she swears an information before a Justice of the Peace. The police officer may seek the advice of Crown counsel regarding legal issues related to establishment of reasonable and probable grounds and whether there is a legal basis for a charge.

Once an accused is charged, he or she is either detained or released from custody. In most cases, police will decide whether an accused should be released or proceed to a bail hearing. If a Crown attorney opposes bail, there is a hearing before a Justice of the Peace unless the accused person consents to detention. At the hearing, the Crown may consent to release or seek a detention order. The Justice of the Peace decides if the person should be detained or released subject to a surety or deposit, or subject to conditions such as prohibiting contact with alleged victims or Crown witnesses, geographical or curfew restrictions, or prohibitions on weapons.

Once a charge is laid, the Crown counsel assigned to the case screens the charge. This means that he or she assesses whether there is a “reasonable prospect of conviction” and whether it is in the public interest to proceed. In conducting this assessment the Crown reviews the material provided by the police, which is often called a “Crown brief.”

A Crown may ask the police to further investigate the matter. It is also common that at the initial screening phase, the Crown determines that further disclosure material is required and contacts the police for this material. The Crown has an obligation to make full disclosure to the accused or defence counsel.

Some offences, termed “hybrid offences,” can proceed either summarily in the Ontario Court of Justice or by way of indictment. In the latter case, the accused can choose the venue: either the Ontario Court of Justice or the Superior Court of Justice, where there is the option of a jury trial. Many sexual offences are hybrid offences, but if the offence is based on an event that occurred more than six months in the past, it must proceed by indictment.

The first appearance of an accused permits the setting of a trial or preliminary hearing date and, at this point, the Crown provides initial disclosure to the defence. Discussions often occur between Crown counsel and defence counsel to see if issues can be narrowed or the case resolved by a plea. This discussion can also proceed at a judicial pre-trial conference, which could include discussion of potential sentences.

A preliminary hearing is held to determine if there is sufficient evidence for a trial. At a preliminary hearing, an accused could be committed to trial or discharged if there is insufficient evidence.

At trial, the accused may be convicted, acquitted, or the charges may be stayed. There are two types of stays: a judicial stay and a stay entered by the Crown. A judicial stay is akin to an acquittal and can occur when there is a breach of the accused’s rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*). A Crown stay gives the Crown one year to determine whether or not to reinstate charges, for example to give time to a witness who is ill. A stay may also be entered if the Crown believes there are reasonable grounds for conviction but it would not be in the public interest to proceed with the charge.

If an accused is convicted, there is a sentencing hearing and the Crown attorney may call evidence about victim impact, including the reading of a victim impact statement by the victim.² A pre-sentence report may be ordered; these are prepared by probation officers, outlining the background of the accused for the assistance of the court in determining an appropriate sentence.

An accused person is presumed innocent until proven guilty. The accused has rights under the *Charter* that support the presumption of innocence, including the right to a fair trial. This includes the right to full disclosure by the Crown and to a trial without delay.

Criminal Code Provisions Concerning Sexual Abuse Have Changed Over Time

The development of case law related to sexual abuse of children and young people and an overview of statutory change provides critical context to the

2. *Criminal Code*, R.S.C. 1985, c. C-46, s. 722.

understanding of policies at the Ministry of the Attorney General. Ms Mary Cameron Nethery, in providing evidence on behalf of the Ministry of the Attorney General, noted, as did other witnesses, that many of the statutory changes were outcomes of the 1984 Badgley Report and the 1990 Rix Rogers Report. These reports also influenced policy development for the guidance of Crown counsel, notably the 1994 Crown Policy Manual.

The following are relevant statutory changes affecting sexual offences against children or young people. Unless otherwise noted, these are changes to the *Criminal Code*:

- 1976: repealed requirement for instruction to the jury on corroboration of complaint; possibility of publication ban
- 1983: repealed offences of rape and indecent assault on a female or male; created new offences of sexual assault, sexual assault causing bodily harm or with a weapon, aggravated sexual assault; abrogation of rules regarding recent complaint; removal of judicial discretion to raise corroboration with the jury; automatic publication ban if requested by Crown or complainant; jury can consider whether accused believed there was consent, but belief does not have to be reasonable
- 1987: repealed several offences; created offences of sexual interference, invitation to sexual touching, sexual exploitation, anal intercourse unless married or consenting adults over eighteen, parents or guardian procuring sexual activity, exposing genitals to persons under fourteen for sexual purposes, living off avails of prostitution if prostitute under eighteen, obtaining sexual services if person under eighteen; consent precluded as a defence where complainant under fourteen; consent precluded as a defence for some sexual offences if complainant was under eighteen (e.g., sexual exploitation); complainant under eighteen at time of proceeding may testify behind a screen; use of videotape for those under eighteen permitted; provided processes for those under fourteen to testify to facilitate admissibility of such evidence
- 1988: introduction of victim impact statement provisions; expansion of publication ban provisions to non-sexual offences and to cover witnesses in the case of certain offences; witnesses under eighteen must be informed by the judge of their right to request a publication ban

- 1992: clarification regarding consent in context of sexual offences; clarification of circumstances where no consent obtained; provisions restricting application of accused's belief in consent as a defence
- 1993: created offences of child pornography and criminal harassment; provision for recognizance orders where fear of sexual offences against person under fourteen; child abduction provisions; testimony aid provisions for those under fourteen; abrogation of rule requiring corroboration of a child's testimony; provision to prevent cross-examination of a witness under fourteen by accused personally and appointment of counsel to conduct cross-examination if accused has no counsel
- 1994: summary conviction incarceration penalty for sexual assault raised to eighteen months
- 1995: created scheme to authorize search warrants for DNA samples
- 1997: created offences of child sex tourism and sexual offences against children committed outside Canada; created aggravated offence for living off the avails of prostitution where steps were taken by accused to force prostitute into activity, creating a minimum of five years and a maximum sentence of fourteen years for this offence; created aggravated offence of soliciting prostitute under eighteen; made breaching court order mandatory aggravating factor for criminal harassment; clarified that female circumcision is aggravated sexual assault; expanded use of testimonial aids and screens; expanded publication ban provision to additional sexual offences and historical sexual offences; created provisions for process and criteria for dealing with production of records from third parties in sexual offence proceedings
- 1999: authorized a support person to accompany a witness under fourteen or with a disability when testifying; provision to prevent cross-examination of a witness under eighteen by the accused personally and appointment of counsel to conduct cross-examination of that witness; created process for authorizing publication bans for any witness or victims in any proceeding; made safety and security of victim or witness a factor in pre-trial release decisions by police or judicial officer; provided for non-communication order while accused is on bail or in custody; allowed victim to read victim impact statement in court.

Policies to Guide Crown Counsel Have Increased Over Time

In terms of policy guidance to those prosecuting offences, the system prior to 1988 was described in testimony as “ad hoc.” From time to time, the Attorney General, Deputy Attorney General, or Assistant Deputy Attorney General sent out memos on various matters. The work to develop comprehensive policy materials started in 1988 and led to the issuance of the Crown Policy Manual in 1994. These policies were intended to evolve over time, and the manual has continued to be updated and supplemented by memoranda. The policies are to guide Crown counsel in the exercise of discretion but are not to provide specific or absolute direction. The Crown Policy Manual has always been a public document.

The development of 1994 policies was influenced by the 1993 *Report of the Attorney General’s Advisory Committee on Charge Screening, Disclosure and Resolutions Discussions* (Martin Report). This report was in response to the 1990 case *R. v. Askov*,³ in which the Supreme Court of Canada set out parameters for trial within a reasonable time. Since many criminal cases exceeded these times, many were withdrawn.

The 1999 Criminal Justice Review Committee Report that looked at efficiency measures to decrease delays also influenced Crown policies. The work of this committee led, among other things, to an annual Justice Summit to develop efficiency measures, in turn leading to the development of several policies and protocols. These include the Bail and Remand Best Practices Protocol and Criminal Case Management Protocol.

Policies and Protocols Related to Relationships Between the Crown and Other Institutions

The 1994 Crown Policy Manual indicates that Crown counsel should participate in development of local protocols to establish and implement inter-agency procedures to respond to child abuse cases. In 2000, a practice memorandum set out Crown counsel’s obligation to liaise with child protection agencies. It also encouraged each Crown attorney to develop a local protocol on reporting to the local Children’s Aid Society, the police, and Victim/Witness Assistance Program where available; this protocol was to be shared with local agencies such as probation offices.

The 2000 practice memorandum stated that Crown counsel have a duty to report any case where there is a reasonable suspicion that a child is or may be in need of protection. The duty is described as an ongoing obligation that cannot be delegated. However, the policy says that it is unclear if Crown counsel

3. [1990] 2 S.C.R. 1199.

falls within the definition of a “professional performing official duties with children” under the *Child and Family Services Act*. In my view, this lack of certainty should be rectified: it should be clear that Crown counsel, as professionals prosecuting allegations of abuse made by children, have an obligation to report suspicion of abuse.

Although the failure to report child abuse is a provincial offence, not an offence under the *Criminal Code*, the 2000 Crown Policy Manual states that Crown counsel should prosecute violations of reporting requirements.

The relationship between the police and Crown counsel has been the focus of policy change, given the ongoing interactions between those who investigate and prosecute offences. While the police and Crown counsel are often required to work in partnership, they have separate responsibilities in the criminal justice system, and separation between the Crown and the police is of fundamental importance to the proper administration of justice.

In 1997, a policy on police relationships with Crown counsel updated the original policy in the 1994 Crown Policy Manual. It qualified the relationship between a Crown and a police officer as being mutually independent, but also requiring cooperation and reliance at all stages of an investigation and court proceedings. The policy stresses that while it would be inappropriate for Crown counsel to provide the “overall blueprint” for investigation, it is appropriate for Crown counsel to give advice to the police on legal issues. When giving specific advice, Crown counsel should keep a record of the advice given to ensure it is not misunderstood. The policy reiterates that the final selection of an appropriate charge and swearing of any information is the exclusive responsibility of the police, but in difficult cases, the 1997 policy recommended the following routine for advising the police:

1. Obtain a full written investigative brief from the police.
2. Give advice in writing addressing the issue of reasonable and probable grounds.
3. Set out the subjective and objective legal tests that apply.
4. If reasonable and probable grounds exist, but there is not a reasonable prospect of conviction, set this out.
5. State that this legal opinion is not binding on the police and that it cannot be disclosed to third parties.

The policy stressed that once charges are laid, Crown counsel has authority under section 11(a) of the *Crown Attorneys Act* to cause the charges to be further investigated and to collect additional evidence. While rare, police may refuse to follow this advice, in which case counsel should then put any request in writing

and then follow the “chain of command” to take it further. The same policy notes that police have an obligation to disclose to the Crown any new evidence and that this is independent of any obligation arising from a request by Crown counsel.

Policies in the 2005 Crown Policy Manual reiterated principles articulated in early documents, such as the importance of separation of police and Crown roles as part of an overall system of checks and balances, and the importance of working relationships of mutual respect and professionalism. However, the 2005 policy also pointed to the need for timely advice from Crown counsel in large and complex police investigations.

A 2006 practice memorandum gave suggestions for the relationship between police and Crown counsel, and replaced the 1997 policy on the same topic. It reiterated that the role of Crown counsel at the pre-charge stage is advisory and not directive, and that police have responsibility for the selection of the appropriate charge and the decision to swear an information. The practice memorandum also reiterated that it is inappropriate for Crown counsel to provide overall direction for an investigation or gather evidence, but that Crown counsel can give advice on legal issues. However, such advice is not binding on the police.

If case-specific advice is given, counsel could be a witness at trial and may therefore be prevented from prosecuting the charge. The practice memorandum states that if a Crown becomes a close member of the investigative team, he or she should not be involved in prosecuting the case, and the role the Crown counsel is expected to perform should be clarified in writing. If counsel is providing advice on the sufficiency of grounds to lay a criminal charge in a difficult, complex, or potentially controversial case, a procedure was established that was substantially similar to the 1997 procedure discussed above. The only significant change was in relation to the fourth step, which was revised to read: “Advise the police when there are reasonable and probable grounds but no reasonable prospect of conviction unless there is a change in evidence.”

The practice memorandum also provides that the “Crown attorney for each jurisdiction may wish to develop a protocol to facilitate the process of advising the police, which would include a list of the types of cases in which these five recommendations should be followed.” I am of the view that a standard draft-type protocol should be prepared and forwarded to all offices to assist the Crown attorneys. The language in the practice memorandum could be made mandatory, or a review process could be put in place to ensure that such protocols are now in place in each jurisdiction, where necessary.

The 2006 memorandum reiterated the same material provided in the 1997 Crown Policy Manual regarding requests for additional investigation or evidence in the post-charge period, the process to follow if police decline to pursue these requests, and the independent obligation of police to disclose any evidence

obtained after charge, whether obtained due to requests of the Crown attorney or otherwise.

Policies and Protocols Related to Prosecutions of Child and Sexual Abuse Cases

The 1994 Crown Policy Manual covered inter-agency coordination and vertical prosecutions, whereby one Crown counsel handles the case so there is continuity. It provided that multi-victim, multi-perpetrator cases be handled by local Child Abuse Coordinators or those with similar expertise. Police were to be encouraged to contact the local Crown Attorney's Office at the outset, and a specific Crown counsel or the Child Abuse Coordinator should be available for advice throughout the police investigation. The policy stated that psychological or psychiatric evidence should be considered for issues such as child sexual abuse syndrome, delayed reporting, gradual disclosure, and recantation. This part of the policy also applied to adult victims testifying about events that occurred when they were children.

The Victim/Witness Assistance Program has had a protocol for multi-victim, multi-perpetrator cases since 1992, and this was updated in 1996. The main thrust of these protocols is to ensure that an experienced person is assigned to these high-demand cases and relieved of other duties to concentrate on them. The 2006 VWAP Policy and Procedures Manual refers to these multi-victim, multi-perpetrator cases as "special prosecutions." The manual notes that there may be an additional need for victim services in such cases, but no commitment should be made to provide additional resources until these resources have been identified and secured.

A 2001 discussion paper on a major case protocol stated that historical sexual abuse cases with multiple victims are considered major cases. It set out roles and responsibilities of those involved and specified that major case teams include at least one VWAP staff member. The Major Case Advisory Group, a group of senior Crowns, was established in 2001 to provide advice for major case prosecutions. Under the major case protocol, the Crown attorney and the police are to determine together who performs various responsibilities, particularly those related to disclosure. An additional responsibility of the Major Case Advisory Group is to examine unsuccessful cases. Before 2001, review processes were informal.

One issue that arises in major cases is the assignment of Crown counsel so that a small or busy local office can handle a major case. Current processes involve identification of a matter as being a major case and assigning a lead Crown attorney or prosecutor. Then one or two additional Crown counsel are brought in

to assist. In the Eastern Region, there are two senior Crowns who move to local offices as the need arises. The flexible assignment of Crown counsel to major cases was first instituted in the period 2000–2002 in conjunction with the establishment of the Major Case Advisory Group.

While there appear to be practices for managing major cases and infrastructure in the Major Case Advisory Group to govern major cases, there is no formal policy in the Crown Policy Manual on the topic. In addition, there appears to have been no update following the 2004 regulation to the *Police Services Act* that dealt with police management of major cases. As a result, there are some inconsistencies: the Ontario Major Case Management Manual says that historical sexual assaults will not necessarily be subject to major case management by police, but the Ministry of the Attorney General policy is that major case management applies to such cases when there are multiple victims. It may be that there is a different meaning given to “major case” by the Crown attorney system and the police, but it is a concern that the policies appear to exist without reference to each other. Crown and police policies related to major case management should be reviewed together to identify inconsistencies or gaps.

The practice of charge screening used after 1993 resulted from the Martin Report. Before 1994, there was no specific policy, but the test for proceeding with a prosecution was (1) whether there was a “triable” case and (2) whether it was in the public interest to proceed. There was no definition of a “triable” case, nor were the public interest factors defined. The first charge screening policy came out as part of the Crown Policy Manual in January 1994. The “threshold” screening test is whether there is a reasonable prospect of conviction. The secondary test is whether it is in the public interest to proceed. The reasonable prospect of conviction test is objective, and the threshold is higher than the test for committal at a preliminary inquiry. However, reasonable prospect of conviction does not require that Crown counsel conclude there is a probability of conviction.

In 1995, a charge screening memorandum clarified the test for reasonable prospect of conviction. It also explained that a single fragile witness could form the basis of a conviction. An updated charge screening practice memorandum was issued in 1997 dealing with the approach to be taken when a witness recants his evidence. Recantation is not in itself a bar to conviction. The policy singles out cases of child sexual abuse and spousal prosecutions but is silent on historical sexual abuse. The suggested process is to:

1. investigate the recantation;
2. re-screen the case to consider whether reasonable prospects for conviction exist; and
3. disclose the recantation and resultant investigation.

The 1997 practice memorandum was replaced with a 2002 memorandum that included a similar policy but added some guidance as to which cases should and should not proceed to trial in the face of a recantation.

In looking at the test of whether there is a public interest in proceeding, the 1994 policy stated that the race, religion, sex, national origin, political association, or position in the community of the accused could not be considered. The 2002 practice memorandum on charge screening reiterated that in screening charges for prosecution, consideration of whether it was in the public interest to proceed should be engaged only once there was a determination that there was a reasonable prospect of conviction.

In terms of interviewing techniques, the 1994 Crown Policy Manual indicated that the Crown attorney should interview a child at least once to establish rapport. It also stated that complainants should be interviewed well in advance of the trial or preliminary hearing and referred to VWAP, if available, or to other available community services.

The manual stated that if adults are testifying regarding events that occurred when they were children, the Crown attorney should consult with them prior to requesting any publication ban.

A 2002 practice memo that was generic in nature did point out that there should be no suggestive techniques used during interviews and there should be pre-charge interviews only in very limited circumstances. In addition, Crown counsel should not conduct investigative interviews. It stated that if, in a preliminary interview, an issue arises that requires investigation, Crown counsel should request the police to investigate.

There was a policy on delays in the 1994 Crown Policy Manual, which stated that due to the trauma for victims occasioned by lengthy waits, and public policy interest, sexual offences should be given scheduling priority.

In 1981, guidelines were adopted to govern disclosure. While the defence was to be provided with all evidence against the accused, including will-states,⁴ witness statements and police notes were not required to be disclosed by Crown attorneys.

The 1994 Crown Policy Manual articulated a disclosure policy that complied with the test in the 1991 Supreme Court of Canada decision in *R. v. Stinchcombe*.⁵ The governing principle is that Crown counsel is under a duty to disclose all information in his or her possession relevant to the guilt or innocence of the accused unless excluded by a legal privilege. Crown counsel have an obligation

4. A will-state is a summary of the evidence a witness expects to give during testimony. They are commonly prepared by police officers with respect to the actions they took during an investigation.

5. [1991] 3 S.C.R. 326.

to make inquiries of police to ensure they have full disclosure. Crown management teams provide support for the system of disclosure and keep track of disclosure.

A 2006 practice memorandum on disclosure provides more detailed guidance. Each local Crown Attorney's Office should have a protocol for disclosure. There are no policies setting out what to do if a police officer refuses to disclose certain evidence, other than raising the issue as a management matter. It would be useful, in my view, to augment policies to encourage the development of local protocols to deal with situations where police refuse to disclose or refuse to investigate on the request of Crown counsel, so that the process for discussing differences of opinion is known before such differences arise.

In 1994, a resolution discussion policy mandated that Crown counsel should balance the interests of the victims, the protection of the public, and the rights of the accused in resolving a case. The policy also stated the Crown counsel cannot accept a guilty plea to a charge knowing the accused is innocent or if a material fact cannot be proven, unless he or she has disclosed this fact to defence counsel. In resolution discussions, Crown counsel are not to bind the Attorney General's right to appeal a sentence. If a Crown counsel is considering not proceeding or resolving the case with a lesser offence, he or she must look at the impact on the victim and consult with the local Crown attorney.

In terms of sentencing considerations, the 1994 Crown Policy Manual has been updated with practice memoranda over time. The relevant sentencing considerations include:

- protection of the public;
- the violation of personal privacy felt by victims;
- psychological harm;
- violation of bodily integrity;
- the great need for general deterrence;
- the prevalence of sexual assault; and
- society's revulsion for such acts.

The 1994 policy reminded Crown counsel that protection orders could be part of sentences in child abuse cases, such as ordering offenders to stay away from employment related to children. Revisions to the 2006 Crown Policy Manual indicated that conditional sentences are not appropriate for child sexual abuse cases, but the manual is silent on historical cases of child sexual abuse.

The Ontario Sex Offender Registry that was the outcome of "Christopher's Law" was in force in 2001, and the National Sex Offender Registry began in 2004. An individual convicted of a designated offence is automatically entered in the provincial registry, which has geographic mapping databases.

This may be of assistance to trace possible offenders in the case of an abduction. Registration in the federal database is not automatic, nor does it have geographic mapping capacity.

The effort involved in delineating policies, particularly in recent times, is very helpful to a large system of Crown counsel, promoting principled decision making and greater consistency. However, it should be clarified whether any policy does or does not apply to historical cases of sexual abuse of children or young people.

Victim-Related Policies

It was not until the issuance of the 1994 Crown Policy Manual that the Ministry had formal policies related to victim issues.

In 2004, a practice memo was issued regarding use of victim impact statements that provided three forms: one for children, one for older children and teenagers, and one for adults. The memo also provided information about the purpose and admissibility of statements and the process of preparation.

The 2005 preamble to the Crown Policy Manual set out that Crown counsel owe victims a special duty of “candour and respect.” In the 2006 Crown Policy Manual, no specific policy deals with the treatment of victims of historical sexual abuse; there is a policy on child abuse and sexual offences generally.

An updated 2006 practice memorandum on “Child Abuse and Offences Involving Children” compiled most policy-related factors for Crown counsel to consider and applies both to abuse and to cases where children have witnessed traumatic events. The memo reminds Crowns of the obligation to have a local Child Abuse Coordinator to facilitate inter-agency coordination, act as a resource person, and ensure cases of child abuse are assigned and scheduled as soon as possible. It recommends updating local protocols, highlights the importance of the Victim/Witness Assistance Program, and suggests maintaining resource lists of programs and agencies for referral.

The memo also explains the obligation to ensure communication to victims, including apprising victims of significant steps in the proceedings such as bail, application for records, trial dates, and sentencing. In particular, it states victims or their family should be aware of plea negotiations, any probation terms, or any conditions or orders related to bail. The need for the victim’s safety is stressed in relation to bail policies.

A practice memorandum on “Sexual Assault and Other Offences” does refer to allegations of historical sexual abuse in the context of the use of psychological or psychiatric evidence, the use of expert evidence related to memory, publication issues, and the management of multi-victim or multi-offender cases. Again, the

lack of clarity regarding what policies apply to historical sexual abuse cases should be rectified to provide better guidance to Crown counsel and to reassure victims of historical abuse that their circumstances have been given thorough policy consideration.

In the sections that follow, I will address a number of prosecutions and related Crown work in respect of cases involving historical child sexual abuse, during the period beginning in the early 1980s and continuing for more than 20 years. These include pre-Project Truth prosecutions and legal opinions; opinions, investigative advice and prosecutions in the period 1993-1996; Project Truth prosecutions; external pressures on Project Truth prosecutions; other prosecutions within this time period that did not arise out of Project Truth and finally, the issue of victim/witness assistance services.

Nelson Barque Not Charged in 1982

Don Johnson Receives Investigative Brief From Ministry of Correctional Services About Nelson Barque

On June 14, 1982, Inspector Clair McMaster, of the Ministry of Correctional Services, sent a letter to Cornwall Crown Attorney Don Johnson enclosing a copy of an investigative report, which attached the report of Peter Sirrs, Area Manager of the Cornwall Probation and Parole Office, regarding former probation officer Nelson Barque. This investigation and report were discussed in detail in Chapter 5, on the institutional response of the Ministry of Community Safety and Correctional Services. Inspector McMaster wanted Crown Johnson to review the report and provide an opinion. Although Mr. Johnson did not recall what decision Inspector McMaster was asking him to make, based on Mr. Johnson's response it is clear that Inspector McMaster was asking him for an opinion as to whether criminal charges should be laid against Mr. Barque.

According to Mr. Johnson, it was not common for a ministry to refer an internal investigation of an employee to the Crown to determine whether charges should be laid. If a government agency came to the Crown with concerns about whether an employee had engaged in criminal conduct, the standard practice was that the Crown would advise the ministry to take the matter to the police. Mr. Johnson admits he did not do that in this case. Mr. Johnson also testified that he would not, in a case like this, open a file. Crown Attorney Murray MacDonald also believed it was very unusual for a ministry to send an internal investigation to the Crown to review and provide an opinion on whether charges should be laid. He expected, however, that an internal office file would be opened if such a request were made.

I am of the view that a Crown counsel providing a formal, case-specific legal opinion to police or another investigative body should immediately open a file,

identify what information or documents he or she is relying on, and keep a copy of the advice or opinion provided. If Mr. Johnson had kept copies of the documents he received from the Ministry of Correctional Services, the Crowns who prosecuted Mr. Barque in 1995 would have had access to and knowledge of this information.

There was no formal policy in place in 1982 dealing with the relationship of police with Crown counsel, nor was there a policy for the review of an internal investigative report from another ministry. The current practice memorandum that deals with the police relationship with Crown counsel should also be applicable to a request for a Crown opinion such as the one made to Mr. Johnson in 1982. The policy directs that when providing case-specific advice:

The advice given by Crown counsel will likely be recorded by the recipient in his or her police notebook. To ensure that the advice given by Crown counsel is not misunderstood, where practicable, Crown counsel should keep a record of the advice given. This can be done by confirming the advice in a letter, reading the officer's notes or having them read back, obtaining a copy of the officer's notes to ensure their accuracy, or keeping contemporaneous notes of the advice. Some Crown counsel maintain a notebook in which they keep a record of all of the advice they give to police.

I am of the view that in this instance Mr. Johnson failed to ensure that notes, correspondence, and records were properly kept and stored, that an opinion provided to the Ministry of Correctional Services was recorded, and that a file was opened with respect to the allegations.

Mr. Johnson had prior professional dealings with Mr. Barque in his capacity as a probation officer. He did not, however, believe he was in a conflict in being asked to provide an opinion because he knew Mr. Barque only in a professional capacity. Mr. Barque worked as a probation officer in Cornwall for almost nine years, from August 19, 1974, until May 4, 1982. Don Johnson was the Crown Attorney in Cornwall from 1974 until 1991. There is a close working relationship between the Crown and local probation officers. This was illustrated during the prosecution of Mr. Barque in 1995, when Mr. Johnson represented Mr. Barque. During his submissions to the Court at the sentence hearing, Mr. Johnson was able to comment on Mr. Barque's work as a probation officer based on Mr. Johnson's experience of working with him, when he was the Crown attorney.

Had the police conducted an investigation and laid a charge, Mr. Johnson's office would probably not have handled the prosecution. In my view, if a conflict would have precluded Mr. Johnson or his office from prosecuting Mr. Barque, that

conflict should also have precluded Mr. Johnson from giving an opinion about whether criminal charges should be laid. There was no conflict of interest policy in place in 1982 that dealt with this situation. There was a 1976 memorandum distributed to all Crown attorneys that dealt with the prosecution of police officers. It provided that the Crown had the discretion to require an outside prosecutor deal with the matter. This memorandum modified a previous 1971 policy that made it mandatory for an outside prosecutor to be involved. The 1976 policy provided that “if the charge is of a serious nature or if you are personally familiar with the defendant you no doubt will wish to require an outside prosecutor, for otherwise the appearance of even handed justice might be impaired.”

Although there was no policy in place, Mr. Johnson was clearly in a conflict and should have declined to offer an opinion on this matter.

Don Johnson Provides Opinion: Insufficient Evidence to Lay Charge

In a letter dated June 22, 1982, Mr. Johnson told Inspector McMaster that he had reviewed the material and concluded “that in the circumstances criminal charges would not be warranted”:

My decision is based on the fact that Mr. Barque when confronted with the allegations resigned immediately. It appears also that one of the homosexual relationships involved an individual who was 21 years of age, therefore, a charge under the criminal code would not succeed.

Dealing with the other individual, Mr. Robert Sheets, the fact that he denies any homosexual relationship with Mr. Barque although Mr. Barque admits to it, there is no support evidence, and I feel it would be fruitless to proceed with any charge.

Mr. Johnson’s understanding was that an internal investigation had been concluded and the Ministry of Correctional Services had determined that no further action was necessary on its part. He considered this a factor in reaching his conclusion.

During his testimony, Mr. Johnson was asked about the connection between Mr. Barque’s resignation and Mr. Johnson’s decision that criminal charges were not warranted. He acknowledged that there were other issues at play, such as consent and the admissibility of Mr. Barque’s statement, that he should have expanded upon in his letter. Mr. Johnson disagreed that Mr. Barque’s resignation was irrelevant in determining whether criminal charges should be investigated:

Well I got the impression, I would assume, from the correspondence from Mr. McMaster that they were quite satisfied with the fact that Mr. Barque had resigned and that was it; that was a fait accompli at that point.

In my view, Mr. Barque's resignation, noted in the internal investigation conducted by Inspector McMaster, should not have been a determining factor in deciding not to lay criminal charges. It is the first factor mentioned by Mr. Johnson in his letter. The resignation was clearly a relevant issue for him in deciding whether criminal charges should be considered against Mr. Barque. Mr. Johnson should not have placed *any* emphasis on Mr. Barque's resignation in formulating his opinion.

Mr. Johnson also concluded that criminal charges were not warranted because one of the homosexual relationships involved an individual over the age of twenty-one. His understanding at the time was that if the individual was over twenty-one years old and consented, there could be no criminal charge. The statement of C-44, who admitted to having a homosexual relationship with Mr. Barque, indicates that he was twenty-one years old at the date the statement was taken. In the statement, C-44 says that the relationship with Mr. Barque lasted for "about a year" and that the last time he saw Mr. Barque was March 31, 1982. C-44's birth date is May 13, 1961.

Mr. Johnson could not recall what materials he was given by the Ministry of Correctional Services. He said he was not provided with C-44's birth date and that the information he had led him to believe that C-44 was twenty-one. He admitted that the issue of age "could have been explored" but he "assume[d] the investigators would have explored that and provided that information." Had Mr. Johnson been informed that C-44 was under twenty-one it might have changed his perspective. A police investigation might have verified some of this conflicting evidence.

With respect to the other individual, Robert Sheets, Mr. Johnson concluded it was fruitless to proceed with a charge because although Mr. Barque admitted the relationship, Mr. Sheets denied having any homosexual relationship with Mr. Barque. The fact that Mr. Barque admitted the relationship should have prompted Mr. Johnson to refer the matter to the police for further investigation or advise the Ministry of Correctional Services to do so.

Another concern Mr. Johnson had was that the statement given by Mr. Barque would be inadmissible. In the statement, he admitted to homosexual relationships with C-44 and Mr. Sheets. In particular, Don Johnson was concerned about the voluntariness of the statement since it was being given to Mr. Barque's employer. This concern was not articulated in his opinion letter. Mr. Johnson

acknowledged that he should have stated that criminal charges were unlikely because, in the circumstances, the evidence was likely inadmissible.

Mr. Johnson did not have a Crown brief when he provided his opinion to the Ministry of Correctional Services. During his testimony, he acknowledged the possibility that if the police had investigated in 1982, they might have uncovered other information and possibly other allegations of abuse. He emphasized that his opinion did not prohibit the Ministry from going to the police: “if they weren’t satisfied with my letter, they could have walked on to the Cornwall Police Department and said ‘look it, this is what we got, we want further investigation and charges laid.’” Mr. Johnson testified that if presented with the same circumstances again he would write the opinion letter and not refer the matter to the police: “Well, what am I going to tell the police, sir? I’m going to tell them that, ‘You don’t have any evidence to lay a charge but go ahead and conduct an investigation.’ It doesn’t make sense to me.”

In my view, this matter should have been referred to the appropriate police authorities for investigation. As Mr. Johnson acknowledged, the Crown is usually asked to provide opinions to the police, presumably after an investigation has been conducted. He could not have known whether a police investigation would have been fruitless or whether it would have uncovered relevant evidence.

The investigative report of the Ministry was not an appropriate substitute for a thorough and objective police investigation. Mr. Johnson did not consider the possibility that other individuals may have been abused by Mr. Barque.

It never crossed Mr. Johnson’s mind that it may have been in the Ministry’s best interest not to have the matter prosecuted. As discussed in Chapter 5, Mr. Sirrs felt the resignation of Mr. Barque was an appropriate response. He concluded it was not necessary for the Ministry to take further action because of his concern that if the matter became public, it would tarnish the image of the Cornwall Probation Office. In my view, Mr. Johnson failed to recognize the seriousness of the allegations, which involved the breach of trust of a probation officer, and provided inappropriate advice to the government agency.

R. v. Father Gilles Deslauriers

On July 2, 1986, Crown Attorney Don Johnson met with Cornwall police investigators regarding charges against Father Gilles Deslauriers. Following the meeting, charges were laid against Father Deslauriers for indecent assault on a male and gross indecency, and a warrant was issued for his arrest. The investigation and background of this matter are discussed in detail in Chapter 8, dealing with the institutional response of the Diocese of Alexandria-Cornwall.

Assignment of a Crown Attorney to the Prosecution

On August 25, 1986, Bruce Young, Deputy Director of Crown Attorneys, confirmed with Mr. Johnson that Rommel Masse, a bilingual Crown, would prosecute the matter. Mr. Johnson was not involved in the prosecution of Father Deslauriers.

Public Interest in the Prosecution

Peter Ayling, a concerned citizen, wrote a letter to the local Crown attorney, Mr. Johnson, on September 11, 1986, stating that he wanted to ensure that Protestants were included in the composition of the jury since the accused was a Catholic priest.

If a French speaking jury is chosen I believe from the nature of the population of the area from [which] the jury will be chosen that all juryman and jury ... will be Roman Catholics. It would be naive to believe that justice could be done in this case if the jury composition excluded Protestants.

I therefore draw to your immediate attention the absolute necessity of selecting a jury that will in[clude] Protestants and so guarantee the degree of impartiality required for an exemplary decision in what will likely become a leading case and set precedent in this [area] of Criminal Law.

Mr. Johnson forwarded the letter to Mr. Masse and noted, "it appears this trial had taken on religious overtones." They did not discuss the letter further.

Preliminary Inquiry and Discussion Between Jacques Leduc and a Victim

The preliminary inquiry in the matter took place before Justice Claude H. Paris from September 15 to 18, 1986.

Benoit Brisson, one of the victims of Father Deslauriers, testified at the preliminary inquiry. At the end of the first day of his testimony, Mr. Brisson was advised not to discuss his testimony with anyone as he was returning to testify the next day.

Gilles Charlebois, defence counsel, advised Mr. Brisson prior to his cross-examination that he was not obliged to disclose anything he had divulged to Father Deslauriers during confession:

Avant qu'on commence, j'aimerais que ça soit bien clair entre vous et moi que toute révélation que vous auriez faite au Père Gilles dans le cadre du secret de la confession, vous n'êtes pas obligé de nous le dévoiler en cour, à moins que vous ne le décidiez de le faire, bien entendu.

According to Jacques Leduc, who at the time was counsel for the Diocese of Alexandria-Cornwall, it became apparent that information that was being put to Mr. Brisson during cross-examination might have been the subject matter of a confession. Mr. Leduc testified that he asked Mr. Masse if he could speak with Mr. Brisson; Mr. Masse agreed. Mr. Leduc also testified he advised Mr. Brisson that if he believed that he was being asked about something that was discussed in confession, he could advise the Court.

Mr. Brisson testified that Mr. Leduc advised him that everything discussed with Father Deslauriers was considered confession:

LE COMMISSAIRE: ... je veux juste comprendre une chose là. En fin de compte, ce que tu me dis c'est que Me Leduc te disait que si on te parlait de choses qui auraient—

M. BRISSON: Qui avaient été discutées avec Gilles.

LE COMMISSAIRE: Au confessionnel.

M. BRISSON: Oui—bien, non, non. Non, non. Même quand c'était dans son bureau, juste entre lui et moi.

LE COMMISSAIRE: M'hm.

M. BRISSON: Tout ce qui avait été dit entre lui puis moi c'était en confession.

Following this discussion between Mr. Leduc and Mr. Brisson, defence counsel asked Mr. Brisson what was discussed with Mr. Leduc. Mr. Brisson said that Mr. Leduc reminded him to advise the Court if matters were discussed that had been the subject of confession.

There is a discrepancy between Mr. Brisson and Mr. Leduc as to what communications are covered by the confessor-penitent privilege. In hindsight, the Crown prosecuting this case should not have allowed Mr. Leduc to speak

to Mr. Brisson on this issue or any other matter while he was giving his evidence. Alternatively, it would have been prudent if someone from the Crown's office were present to hear what Mr. Leduc told the witness so there would be no misunderstanding.

However, the question of whether certain matters were privileged or not is not relevant to the institutional response of the Ministry of the Attorney General. As I will discuss in more detail in the section "Prosecutions Related to Allegations Reported by Claude Marleau," the courts in Ontario do not recognize the confessor-penitent privilege. Any advice about its non-admissibility was erroneous.

On September 18, 1986, Father Deslauriers was committed to stand trial on seven counts of indecent assault on a male and four counts of gross indecency. He had initially been charged with eight counts of indecent assault and eight counts of gross indecency. Mr. Masse advised Mr. Johnson that some of the charges had been withdrawn because of insufficient evidence.

Pre-Trial Conference

Mr. Masse wrote to Mr. Johnson on October 24, 1986, advising him that at a pre-trial, Justice Jean Forget indicated that if Father Deslauriers pleaded guilty the sentence would be imprisonment of fifteen to thirty days consecutive on each count plus probation for a significant period. Mr. Masse stated that defence counsel was distressed at the prospect of his client serving jail time and wanted a further pre-trial to be heard before Justice Gratton, who would be presiding over the trial.

Father Gilles Deslauriers Pleads Guilty and Receives a Suspended Sentence

On November 10, 1986, Father Gilles Deslauriers pleaded guilty and was convicted of four counts of gross indecency. The remaining counts were withdrawn at the request of the Crown. He received a suspended sentence and probation for two years with a condition that he conform to the directives of Bishop Adolphe Proulx: "Qu'il se conforme aux directives de Monseigneur Adolphe Proulx afin de s'assurer que ce dernier puisse exercer une surveillance efficace de l'accusé."

Mr. Brisson recalled being advised by the investigating officers that Father Gilles Deslauriers had pleaded guilty and received a sentence of two years of probation. Denyse Deslauriers, Mr. Brisson's wife, and Lise Brisson, his mother, testified that they were frustrated by the inadequacy of the sentence in comparison to the impact of the crime.

Unsuccessful Request for Crown Appeal

Mr. Masse sent a lengthy letter to the Crown Law Office requesting an appeal of the sentence imposed on Father Deslauriers. He noted:

I feel that this sentence is totally inadequate in that Mr. Deslauriers should have gone to jail even if for only a short and sharp period of time. This case has attracted a great deal of media attention and the community is now in an uproar over the sentence. I felt that this case involved a blatant breach of trust on the part of the accused and that such a blatant breach of trust should have been met with a denunciatory sentence. The public perception of this case is that the accused received a lenient sentence only because of his position as a Roman Catholic priest. Consequently, this results in the administration of justice being held in disrepute.

Mr. Masse also wrote to Mr. Johnson advising that he was not satisfied with the results and was requesting a Crown appeal:

It seems to me that this case concerns a blatant breach of trust on the part of the accused and also a gross abuse of his position of authority as chaplain at La Citadelle High School. Consequently, the facts cried out for a term of incarceration.

In January 1987, Mr. Masse tried again to convince the Crown Law Office to appeal, given that the Crown was appealing a suspended sentence imposed on Father Dale Crampton, a priest convicted of sexual offences in the Ottawa area. This appeal resulted in Father Crampton being sentenced to a period of eight months of incarceration. In a letter to the Director of the Crown Law Office, Mr. Masse wrote that it was important for the Crown to be consistent in similar matters. He wrote that a media representative had already contacted him about the Crampton appeal.

On January 21, 1987, Mr. Johnson also wrote to the Director of the Crown Law Office and echoed Mr. Masse's request to reconsider the appeal. Mr. Johnson wrote that citizens of the community and the media would be calling upon him to answer questions as to why the Crampton and Deslauriers cases were being treated differently. He asked the Director to advise him of the principles that were considered by the Ministry in arriving at its decision with respect to these matters.

Mr. Johnson did not receive a response to this letter. He wrote a further letter on March 23, 1987, to the Director of Crown Attorneys advising that he had

read in the newspaper that the Attorney General would not appeal the Deslauriers case. He was dismayed that he found this out from the media. In the article Mr. Johnson referred to in his letter, Mr. Masse was quoted as saying that Father Deslauriers' sentence was "at the low end of the scale" and he thought he should have gone to jail to send a message to the public. Edward Then, Director of the Attorney General's Crown Law Office, provided an explanation as to why the Deslauriers case differed from the Crampton matter. The article said:

"There were similarities between the cases," said Ed Then, director of the Attorney General's Crown Law office.

"Both cases were horrible, but there were differences too," he added.

"In deciding whether to appeal each sentence, impact statements from the court proceedings are considered," Then said.

...

"In the case of Father Deslauriers, while it was still very serious, the boys were 17, 18 and 19 years old. They were almost adults.

"In the case of Father Crampton, we were talking about much younger children—ages 10 to 18.

"The devastation brought on them as a result of the incidents was horrific," Then said. "It was bad enough to be molested, but it also caused them to lose their faith in God and authority.

"And it happened to quite a number of small boys over such a long period of time in the Crampton case, too," Then said.

No Evidence on the Distinction Between Cases

Crown counsel in both the Deslauriers and the Crampton matters requested that the sentences imposed at trial, neither of which included a period of incarceration, be appealed. The sentence in the Crampton case was appealed, resulting in a period of incarceration. Mr. Then's comments as reported in the media appear to draw some distinction between the Crampton and the Deslauriers matters. Unfortunately, none of the materials reviewed by the Crown Law Office in determining whether to appeal were filed as exhibits at the Inquiry. Without the benefit of those materials, I am not prepared to comment on the decision of Crown Law Office not to proceed with an appeal of Father Deslauriers' sentence.

R. v. Jean Luc Leblanc, 1986

The investigations into Jean Luc Leblanc in 1986 and again in the late 1990s were discussed in Chapters 6 and 7, on the institutional responses of the Cornwall Police Service (CPS) and the Ontario Provincial Police, respectively. This section looks at the prosecution of Mr. Leblanc in 1986 following the CPS investigation into allegations of sexual abuse made by Jason Tyo and Scott and Jody Burgess. The prosecution arising out of charges in the late 1990s will be covered in a later section.

Crown Opinion From Don Johnson Regarding Allegations

Constable Brian Payment testified that on January 27, 1986, he met with Crown Attorney Don Johnson regarding the Jean Luc Leblanc matter. Constable Payment's notes read: "Met with Don Johnson in my office: re: 531/86. Mr. Johnson read statements and agreed charges of gross indecency be laid." Although Mr. Johnson could not recall this meeting with Constable Payment, he agreed that the meeting probably occurred.

On January 27, 1986, Constable Payment swore an information containing three counts of gross indecency against Mr. Leblanc. Mr. Johnson acknowledged that the statements in the Crown brief alleged multiple acts that spanned over four years. The information sworn by Constable Payment refers to one count of gross indecency against each of three boys, rather than multiple acts against each of them, as they had alleged. In addition, allegations of anal sex were not captured in the charges laid. When asked about this, Mr. Johnson said he did not draft the information but agreed that he could have amended it.

Release Conditions of Jean Luc Leblanc

As discussed in Chapter 6, Mr. Leblanc was released on an undertaking without any condition requiring him to abstain from communicating with the alleged victims or with other young people. Mr. Johnson testified that today restrictions on communication with victims are automatically added to undertakings given on release. He agreed that Mr. Leblanc's terms of release should have included a term that he would not be in contact with the alleged victims or any person under the age of eighteen.

Mr. Johnson acknowledged that he could have amended the undertaking and added terms of release. However, he did not believe there was a policy at the time requiring that undertakings be reviewed by a Crown attorney to ensure they had the appropriate terms of release. He explained that, at the time, he relied heavily on the terms suggested by the police.

Disclosure Request and Plea Negotiations

In May 1986, defence counsel for Mr. Leblanc suggested that his client might plead guilty to one of the charges if the other two were withdrawn. Mr. Johnson responded a few months later and suggested that Mr. Leblanc plead guilty to two counts of gross indecency, because he felt they were “two separate and distinct incidents and should be treated as such.” The Crown ultimately withdrew the count related to the allegations of Scott Burgess. Mr. Johnson did not consult with Mr. Burgess in making this decision.

Mr. Johnson testified there may have been credibility issues with regard to Mr. Burgess. He said that if he had been aware that the three boys witnessed the abuse on each other and that Mr. Leblanc had made an inculpatory statement to Constable Payment, it would have minimized his concerns about Mr. Burgess’ reliability. The inculpatory statement by Mr. Leblanc was “if they felt uncomfortable, all they had to do was to tell me not to do it anymore and I would have stopped right away.” This information was contained in the Crown brief.

Mr. Johnson also stated, in his August 1986 letter to defence counsel, that with respect to sentence it was the Crown’s position that Mr. Leblanc was not in a position of trust with the victims and that they willingly cooperated with the act. In his testimony, he maintained his position that the victims’ willingness was a mitigating factor. This position has been denounced and decried by experts with whom I agree.

Mr. Johnson testified that he did not believe Mr. Leblanc was in a position of trust vis-à-vis the alleged victims because he did not have authority over them. He acknowledged that today, in the right circumstances, the law is such that any relationship between an adult and a child could be characterized as a position of trust.

Sentence

On May 13, 1986, Jean Luc Leblanc pleaded not guilty to all three counts. At trial, on November 6, 1986, he pleaded guilty to two counts, the remaining count having been withdrawn at the request of the Crown.

Before the trial date, Mr. Johnson received a report from Dr. John Bradford, a psychiatrist and the Director of Forensic Service at the Royal Ottawa Hospital, who examined and treated Mr. Leblanc between April and October 1986. Mr. Johnson relied heavily upon the recommendations of Dr. Bradford in determining his position on sentencing. In his conclusions Dr. Bradford recommended, “I believe a noncustodial disposition with a Probation Order, possibly with conditions of psychiatric treatment to allow more formal monitoring, is likely the appropriate disposition in this case.”

Mr. Leblanc received a non-custodial sentence of three years probation with the condition that he attend a counselling program arranged by the probation office. The Crown did not appeal the sentence, which Mr. Johnson felt was appropriate.

There were no terms in the probation order with regard to contact with victims or youth. Mr. Johnson acknowledged that there was a policy in effect at the time that there should be no contact with children in such matters. He did not know if the Crown counsel who handled the sentencing asked for this condition.

Constable Payment testified that he became aware of the fact that one charge was dropped and of the sentence only afterward. However, according to Mr. Johnson, it was his general practice to confer with the investigating officers to tell them what had been put on the table during plea negotiations and to ask for the officers' position.

Crown Contact With Complainants

Jason Tyo testified that he was made aware of Mr. Leblanc's court dates and was invited to attend court for the sentencing. He believed the Crown attorney read his victim impact statement in court.

Scott Burgess testified that he did not meet with the prosecutor and was not told that the charges involving him were withdrawn. In addition, he was not told about the sentencing hearing and so did not have the opportunity to attend. Mr. Johnson acknowledged that he had no contact with Mr. Burgess.

Mr. Johnson testified that in 1986 there was no Witness/Victim Assistance Program in the Crown Attorney's Office. He noted that in his nineteen years as Crown attorney in Cornwall, there was no written policy that required an alleged victim to be contacted if charges were being dropped against an accused. He could also recall no policy requiring Crown counsel to inform alleged victims about what was happening with their particular charges.

Mr. Johnson explained that he assumed that the investigating officer would contact complainants and tell them if charges were being withdrawn. According to Mr. Johnson, investigating officers were typically involved throughout a prosecution and he believed they were the ones who updated complainants or victims. It appears that in this matter the investigating officer and the victims found out about the plea arrangement only after the fact, and thus I find that Mr. Johnson did not inform the investigating officer, which, in hindsight, he should have.

A Missed Opportunity

Don Johnson's failure to provide advice on these charges, and his unfortunate view that the victims' apparent willingness was a mitigating factor, led to Mr. Leblanc

not being appropriately charged, in my view. Had Mr. Leblanc been charged with additional or more serious offences, he may have received a harsher sentence that may have included a period of incarceration or more restrictive conditions in his probation order.

Jean Luc Leblanc pleaded guilty to two counts of gross indecency and received a suspended sentence. He was placed on probation for a period of three years, without a condition that he be prohibited from contacting victims. Within weeks, he was abusing one of the same victims. His abuse of that individual and many others is discussed in more detail in Chapter 7.

Crown Opinions Provided to the Children's Aid Society Before 1991

As mentioned in Chapter 9, on the institutional response of the Children's Aid Society, the Crown Attorney's Office occasionally interacted with officials from the CAS. Don Johnson was the acting Crown attorney in Cornwall from 1972 to 1974 and then the Crown attorney from 1974 to 1991.

Mr. Johnson testified there were infrequent calls in limited situations between the CAS and the Crown's office. When he was Crown attorney in Cornwall, Tom O'Brien headed the local CAS office. Although Mr. Johnson had no recollection of meetings with Mr. O'Brien, he accepts that they had meetings. Mr. Johnson testified that if CAS officials told him about circumstances where he believed there was sufficient evidence of a criminal offence, he would have told the CAS officials to contact the police. Mr. O'Brien testified that he would have expected the Crown to tell him to go to the police if that was the appropriate thing to do. If Mr. Johnson had told Mr. O'Brien to go to the police, he would have done so. According to Mr. O'Brien, Mr. Johnson never told him to go to the police.

Cieslewicz Foster Home

As discussed in Chapter 9, a matter came to the attention of the Crown involving allegations of abuse against the foster father at the Cieslewicz foster home. On October 31, 1978, Mr. O'Brien wrote a letter to Barry Dalby, Director of Child Welfare, Child Welfare Branch, advising him of both past and present allegations made by girls in the Cieslewicz foster home. Mr. O'Brien further advised that he would be meeting with the Crown attorney that day.

On November 1, Mr. O'Brien wrote to Mr. Dalby that he had met with Crown Attorney Johnson, Assistant Crown Attorney Guy DeMarco, and Angelo Towndale. The letter stated that after considering the facts presented to him, Mr. Johnson was of the opinion that there was insufficient evidence to proceed with any charges against Mr. Cieslewicz.

Mr. Johnson testified that he has no recollection of this meeting. Mr. Johnson does not know what facts were presented to him nor whether Mr. O'Brien showed him the letter he sent to Mr. Dalby outlining the allegations. Mr. O'Brien testified that the information provided to the Crown attorney would be fairly well reflected in the information provided to the Director of Child Welfare.

In providing an opinion in this matter, Mr. Johnson would have relied entirely on the information provided to him by CAS. He cannot recall what was discussed and does not recall requesting to view the case files.

Lapensee Group Home

Another CAS matter that came to the attention of the Crown was an incident in late 1982 at a CAS group home run by Mr. and Ms Lapensee. One of the girls alleged that she and the other girls in the home were being sexually molested by Brian Lapensee, the son of Mr. and Ms Lapensee. A serious occurrence report was prepared regarding this matter, and Mr. O'Brien took the matter to the Crown Attorney's Office. In a letter to Robert Nadon, Program Supervisor of the Children's Services Area Office, dated December 2, 1982, Mr. O'Brien wrote, "While I do not expect any action on the part of the Crown Attorney or the Police, I have decided to discuss the whole matter with the Crown Attorney and have made an appointment with him."

Four days later, Mr. O'Brien wrote to Mr. Nadon again, advising that he had met with the Crown on December 6 and that "after a brief discussion and perusal of the report it was felt that no further legal action would be taken."

Mr. Johnson does not recall meeting with Mr. O'Brien about these allegations. He testified that perhaps the conversation was between Mr. O'Brien and Assistant Crown Attorney Guy DeMarco, as they were close friends.

There was another incident at the same group home in April 1983, with allegations against the same individual. The details of this incident have been discussed in Chapter 9. On April 20, Mr. O'Brien discussed this incident with Assistant Crown Attorney Alain Ain. Mr. Ain's opinion was that there was no point in pursuing charges against Brian Lapensee at that time. On April 22, Mr. O'Brien followed up with a letter to Mr. Ain enclosing a copy of the serious occurrence report and outlining why Mr. O'Brien felt it was not necessary to lay charges. It does not appear that Mr. Ain was provided with a copy of the December 1982 serious occurrence report. Nor does Mr. O'Brien, in this letter, discuss the earlier complaints and investigation. Mr. O'Brien testified that he did not recall why Mr. Ain was not told the entire history relating to Brian Lapensee. Mr. O'Brien admitted he should have provided the assistant Crown attorney with enough information for him to make a decision regarding charges.

With respect to these incidents, Mr. Johnson testified that he thought Mr. O'Brien was an honest individual doing the best he could with the resources he had available to him. He hoped that in seeking an opinion from the Crown, Mr. O'Brien would provide him with all the information he had. In both the Lapensee and Cieslewicz cases, the police were never notified about the complaints. According to Mr. Johnson, an opinion from the Crown did not prevent the CAS from going to the police. With respect to both of those homes, Mr. Johnson said if he did speak to CAS about these matters, his instruction would have been, "If you have sufficient evidence, please contact the police."

Mr. Johnson testified that, when asked by agencies for an opinion, he considered that it might be their hope that the answer they would get was that there was insufficient evidence to lay charges. He acknowledged that this happened with the opinions he gave.

In my view, these are examples of the Ministry of the Attorney General providing advice to Ministry agencies without allowing for a proper and sufficient investigation by police authorities. The Ministry here also failed to ensure that notes and records were properly kept and stored, that opinions provided were properly recorded, and that files were opened with respect to allegations of sexual abuse. A policy should provide that allegations of sexual abuse reported to a Crown counsel be immediately turned over to police authorities for investigation.

Second Street Group Home

As discussed in Chapter 6, on the institutional response of the Cornwall Police Service (CPS), in 1989, a former CAS ward named Jeannette Antoine alleged that she was abused at the Second Street group home when she was a child. She recounted physical abuse and sexual acts by staff members at the group home. On September 25, 1989, Crown Attorney Johnson met with CPS Deputy Chief Joseph St. Denis, Inspector Richard Trew, and Mr. O'Brien. Mr. Johnson did not recall the meeting but accepts that he was there. He agreed that a meeting with the Director of the CAS and high-ranking police officers was significant and did not happen often. Mr. Johnson does not recall opening a file.

Mr. O'Brien's notes of the meeting state:

During the course of our meeting we talked about the strapping that had taken place in the group home, and the fact that this was not necessarily a criminal action in that it was not against any section in the Criminal Code.

As a result of our conversation it was suggested that I send a registered letter to Jeanette inviting her to come to see me, and that in it I ought to

enclose a copy of our Complaints Procedure. It was suggested that if Jeanette did not take any further action, there need be nothing further done on our part.

It appears that no instances of sexual improprieties were discussed. Although it is not indicated in his notes, Mr. O'Brien recalled providing the entire file to Crown Attorney Johnson, who reviewed it and told Mr. O'Brien he did not have to take further action.

Mr. O'Brien recalled that he went to the Crown because he knew many of the Crown attorneys personally. It was easier for him to go directly to the Crown and he had confidence in Mr. Johnson's abilities. Mr. O'Brien believed that if a Crown attorney thought the police should be involved he or she would have told him. Mr. O'Brien did not recall if the Crown ever told him to go to the police.

Deputy Chief St. Denis remembered attending the meeting but not specifically what was discussed. He did not think anything was decided during the meeting other than that there was no reason to go any further. He believed those remarks came from Crown Attorney Johnson.

Tom O'Brien Advises Don Johnson He Went Back to Police

On October 3, 1989, Mr. O'Brien had another contact with Mr. Johnson about this matter. Mr. O'Brien's notes read:

I was finally able to reach the Crown Attorney, Don Johnson, today and advise him that I had gone back to the Police, my reasons for doing so, and the kind of information I had given to them. I asked whether he wished a copy of this material at the present time and he said he did not because he felt if the police were going to pursue the matter further, they would be alerting him with the information they had, whereas if their decision was not to proceed further, then there was no point in circulating a lot of damaging documents.

It appears from Mr. O'Brien's notes that he went back to the police because of information in a case worker's notes that suggested inappropriate sexual behaviour by CAS staff while the group home was in operation.

Mr. Johnson has no recollection of this discussion. According to Mr. Johnson, he did not tell them not to circulate anything. His understanding was that the police were going to investigate. Mr. O'Brien felt that the Crown's office was content at this point to leave the matter in the hands of the Cornwall police.

***Constable Kevin Malloy Advises Tom O'Brien Insufficient Evidence;
Crown Agrees***

According to Mr. O'Brien's notes, on February 7, 1990, Constable Kevin Malloy advised Mr. O'Brien that there was not sufficient evidence on which the police could proceed and the Crown attorney agreed with this decision.

According to Constable Malloy, he had credibility issues with Ms Antoine's statement that he discussed with Inspector Trew, and then he sought advice from Crown Attorney Johnson. He showed Mr. Johnson all the statements and believes Mr. Johnson read Ms Antoine's statement in its entirety. The purpose of the meeting, according to Constable Malloy, was to look at the issue of reasonable and probable grounds to lay charges.

Constable Malloy understood that following this meeting, Crown Attorney Johnson would be sending information about this matter to the Regional Director of Crown Operations. Constable Malloy was waiting for a response from the Crown and put the file in abeyance.

Mr. Johnson testified that he would never tell a police officer whether to lay charges. That is not his job. His job is to instruct on evidence and procedure.

Don Johnson Sends Letter to Regional Director of Crown Attorneys

On April 4, 1990, Mr. Johnson sent a letter to Norman Douglas, Director of Crown Attorneys, Eastern Region, enclosing the statement given by Jeannette Antoine to Constable Malloy regarding allegations of abuse by CAS staff. The letter stated:

Although there appears to be some factual basis for a further investigation, I cannot find any indication of specific dates when the alleged incident occurred, or any names and addressed [sic] of any witnesses whom [sic] may substantiate the allegations.

Mr. Johnson further wrote that he was informed that an investigation had been carried out in the late 1970s and certain CAS employees had been let go but no charges were laid.

Mr. Johnson testified that it was rare for a Crown attorney to send this type of a letter to the Director of Crown Attorneys. He did so in this case because it involved another ministry of the government of Ontario and because the publicity could cause embarrassment. He acknowledged that he took a different approach here than he did with the Nelson Barque situation in 1982 because new processes had since developed, and Crown attorneys were instructed to provide certain

information to their Directors to make them aware of situations that might be developing in their regions.

Mr. Johnson testified that his primary concern was a lack of specificity in the allegations. He brought the lack of dates and names of witnesses to Mr. Douglas' attention because it would have caused great difficulty for the Crown to prosecute a case like this. Mr. Johnson testified that it has been his experience that complaints of historical sexual abuse typically lack specific details relating to dates and that certain investigative steps can be taken to determine a general time frame. He agreed it would not have been fatal in 1990 in a historical sexual abuse case not to have a specific date but maintained that it was necessary to have a time frame, location, identification of the parties, and any supporting evidence that may be available.

Mr. Johnson concluded the letter:

I have not brought up the matter of laying charges with the Cornwall Police as names and dates are not available. Should you wish to discuss the possibility of laying charges, I would request an interview with Cst. Malloy and myself. I await your reply.

Constable Malloy testified that between February 5 and April 4, 1990, he had not asked Ms Antoine for names or addresses of fellow residents of the group home and that he never asked CAS for that information either. Constable Malloy does not recall Mr. Johnson mentioning that he was concerned about not knowing names and dates and said that if he had, Constable Malloy probably would have contacted the CAS for that information.

The letter does not refer to the credibility of Ms Antoine or the concern Constable Malloy said he had about her having a different version of the events. Finally, the letter does not give any conclusion about reasonable and probable grounds. Constable Malloy testified that he was surprised that the topic was not covered in the letter because the purpose of the meeting with the Crown was to look at the issue of reasonable and probable grounds.

This letter was copied to Constable Malloy and he recalls receiving it. He did not raise any objections with the Crown about the letter.

Norman Douglas Requests Police Keep Investigating

Mr. Douglas wrote a reply to Mr. Johnson on April 10, 1990, advising:

You are quite correct that we ought to be very careful on these matters, and have the police investigate every allegation of abuse. I would like you to make sure the police begin an investigation if they already have not done so. Perhaps Cst. Malloy can dig a little deeper to secure specifics.

Mr. Johnson testified that he does not recall receiving this letter. He recalls being approached in the mid-1990s by Constable Malloy and Staff Sergeant Garry Derochie, who asked if he recalled receiving the letter. If Mr. Johnson did not in fact receive this letter, he acknowledges that he did not follow up on his April 4 letter. He said that at the time there were no reminder systems in place to indicate that he had not heard back from Mr. Douglas.

As discussed in Chapter 6, Constable Malloy was not aware of this correspondence or the direction from Mr. Douglas to “dig deeper” and saw this letter for the first time during the internal investigation conducted by Staff Sergeant Derochie in 1994. Constable Malloy testified that if he had seen this letter he would have shown it to his superiors and continued with his investigation.

Mr. Johnson agreed that the miscommunication that resulted in his not receiving this letter is “unacceptable.” He also acknowledged that that because Mr. Douglas’ instructions to dig deeper were not followed, many other aspects of the Jeannette Antoine investigation were muddled up. He maintained, however, that it was not his practice as Crown to do nothing in respect of matters brought to his attention.

This is another example wherein the Ministry of the Attorney General failed to ensure that notes and records were properly kept and stored, that opinions provided to police and other agencies were properly recorded, and that files were opened with respect to allegations of sexual abuse. In my view, Don Johnson failed to follow up with the Director of Crown Attorneys, Norman Douglas, with respect to Mr. Johnson’s letter of April 4, 1990, regarding the investigation of Ms Antoine’s allegations of abuse.

Police Waiting for Response From Crown

According to Inspector Trew, he and Constable Malloy never had a concluding meeting to go over the whole file because they were waiting for a responding letter from the Crown attorney. Therefore, the file was left in abeyance. It is clear from the evidence that the police were never directed to continue with their investigation. As I indicated in Chapter 6, the CPS should also have done more to follow up on this matter before its re-investigation in 1994.

Crown Opinion Provided in 1994 Second Street Group Home Investigation

In January 1994, Constable Shawn White of the Cornwall Police Service was assigned to re-investigate Jeannette Antoine’s allegations of abuse at the Second Street group home. As discussed in the previous section, Ms Antoine initially came forward with these allegations in 1989. Constable White’s initial understanding was that the complaint dealt with physical abuse. The details of that

investigation have been discussed in Chapter 6, on the institutional response of the Cornwall Police Service.

During the course of the investigation, Constable White also heard allegations that John Primeau, a worker at the Second Street group home, had abused young residents. On June 14, 1994, Constable White met with Peter Griffiths, Director of Crown Operations, Eastern Region, at his office. During this meeting, Constable White told Mr. Griffiths how the investigation was conducted and advised him of the three alleged incidents of sexual abuse committed by Mr. Primeau. Constable White also told Mr. Griffiths that he had received allegations of sexual abuse in other foster homes.

The fact that a number of people were making similar allegations about occurrences in group or foster homes caused Constable White some concern. He was also concerned that there was a systemic problem with the handling of complaints of sexual abuse made against employees of the Children's Aid Society and foster parents. Constable White's notes show a discussion about the "possible need to develop a protocol in this area." Although it was discussed during this meeting, the potentially larger problem within Children's Aid Society (CAS) foster or group homes was not the crux of Constable White's concern. Constable White also testified that there was no information to suggest any criminal activity on the part of the CAS itself.

In my view, allegations of physical and sexual abuse made against employees and foster parents who are employed or supervised by the CAS is suggestive of criminal activity within the institution if there were concerns about how those allegations were handled or, more accurately, were not handled or mishandled.

Constable Shawn White Provides Brief to the Crown

Constable White prepared an extensive brief, which included his handwritten notes and copies of all the written statements taken during the investigation. The brief was provided to Mr. Griffiths. According to Staff Sergeant Garry Derochie, the brief was sent to Mr. Griffiths rather than to the local Crown attorney, Murray MacDonald, because Mr. MacDonald had "declared that his office might be in a conflict" given that former Cornwall Crown attorney Don Johnson was the consulting Crown on the original complaint and had involvement in the matters being reviewed. When asked about his involvement in this matter, Mr. Griffiths testified that he believes he was providing a "second opinion." Since Mr. MacDonald was present at a meeting with Constable White and Mr. Griffiths in October 1994, Mr. Griffiths believed the local Crown was not precluded from involvement in this matter.

As Mr. Griffiths did not have a specific recollection about why he was brought in, I accept the evidence of Staff Sergeant Derochie that Mr. Griffiths was consulted

from the outset because Mr. MacDonald's office was in a conflict due to Don Johnson's previous involvement in the matters being investigated.

Constable White sought a Crown opinion in this matter because there was a legal issue as to whether the police had a *prima facie* case and whether they could lay a criminal charge. He recalled that the policy at the time was that there had to be a reasonable prospect of conviction in cases of historical sexual assault before the Crown would initiate a prosecution. Regardless of whether there was such a policy specific to historical sexual assault cases, the original Crown policy on charge screening issued on January 15, 1994, and updated on February 10, 1995, provided that if "the Crown determines there is no reasonable prospect of conviction, at any stage of the proceeding, then the prosecution of that charge must be discontinued." The Crown was thus required to assess if there was a reasonable prospect of conviction for *any* prosecution.

Constable White did not have reasonable and probable grounds or he would have laid the charges. This is why he sought advice from the Crown. In my opinion, if Constable White thought he did not have reasonable and probable grounds, there was no need for him to seek the advice from the Crown. I accept that police officers will occasionally seek advice or input from the Crown in order to determine what specific charges are appropriate, particularly in cases of historical sexual assault or other areas where the law has changed over time. In these cases, however, I would expect that the police officer have reasonable and probable grounds to believe that a crime was committed. Once a police officer has established reasonable and probable grounds, he or she can consult with the Crown about the reasonable prospect of conviction.

Meeting of Police and Crowns on October 19, 1994

On October 19, 1994, Mr. Griffiths and Mr. MacDonald met with Constable White. Constable White testified that he had discussed the brief with Mr. MacDonald before the meeting with Mr. Griffiths. Constable White's notes state that during the meeting, Mr. Griffiths said he had read the brief and "was in agreement with us that there was no evidence to support Ms Antoine's allegations against Bryan Keough." The police did not proceed with the allegations of sexual misconduct by other workers because the complainants were not willing to make formal complaints and had problems remembering some of the facts. With respect to the allegations of physical abuse made by Jeannette Antoine, the Crown was of the view that they could show only common assault, a summary conviction offence for which the limitation period had already lapsed.

Constable White testified that the three women who made allegations of sexual abuse against John Primeau were not prepared to file formal complaints. According to Constable White, they were willing to speak to him about these

allegations only “with the understanding of trying to help [him] understand what happened in the group home.” Some of the complainants were willing to proceed with their allegations of physical abuse. These allegations included being put through a wall and being hit with a belt with enough force to cause bleeding. With respect to the latter allegation, Constable White did feel that this was excessive punishment. He sought the advice of Mr. Griffiths as to whether this constituted more than common assault.

Although certain details contained in the brief were not discussed during the meeting, Constable White had the impression that Mr. Griffiths had a good understanding of all the facts outlined in the brief. Mr. MacDonald had no recollection of the allegations that were the subject of this investigation or of this meeting with Mr. Griffiths and Constable White. However, he does not deny that he attended the meeting, reviewed the brief, and discussed it with Mr. Griffiths.

Peter Griffiths’ Opinion Letter: No Charges

Shortly after the meeting, Mr. Griffiths provided a written opinion to Constable White in a letter dated October 24, 1994. Regarding the allegation of sexual abuse made by Ms Antoine against Bryan Keough and Derry Tenger, Mr. Griffiths concluded:

Given the nature of this allegation, the age of the complaint and the lack of confirmatory evidence, it is my opinion that you do not have reasonable and probable grounds for the laying of any charges arising out of this complaint.

With respect to the allegations of sexual misconduct by other victims, Mr. Griffiths’ opinion was that they were “subject to several apparently insurmountable impediments”:

I understand that none of the victims wish to make a formal complaint to the police about any sexual assault suffered by them in the 1970s notwithstanding that they have had every opportunity and encouragement to do so during the course of this investigation and indeed the last fifteen years. Some of the victims have been adamant to the point of hysteria on this instruction to the police.

The second great impediment is that the memories of various victims are severely impaired. They appear to have a very limited ability to even recall the outline of these events complained of. They are incapable of

identifying their abusers, naming a time or place for the alleged offences, or providing the most straightforward details that can be used to support their allegations.

Mr. Griffiths' opinion was based on the brief prepared by Constable White and information he received from Constable White during the meeting of October 19. Mr. Griffiths testified that he always depended totally on the police and the information they provided: "I'm not an independent investigator."

In terms of the first "impediment" mentioned in his opinion letter, Mr. Griffiths clarified during his testimony that this applied to the complaints of both the physical and the sexual assaults. Even though he believed the complainants did not want to proceed with the allegations of physical assault, Mr. Griffiths provided an opinion on the limitation period. This is inconsistent with the evidence showing that the complainants were willing to proceed with the allegations of physical abuse. Constable White's notes, for example, indicate that C-84 wanted the police to investigate his allegations of physical abuse "and if possible lay the appropriate charges."

Mr. Griffiths obtained the information that none of the victims wanted to make a formal complaint from Constable White. He acknowledged that the written brief would not necessarily have left him with that impression. Indeed, the brief contains statements that suggest alleged victims were willing to proceed. A statement was taken from C-84, who alleged physical abuse by staff at the Second Street group home. At the end of the statement, C-84 said:

At this time I feel I have told you all I know or remember through counselling. I may remember more and at such time if I feel it would help I will contact you. But this is all there is at this time.

During their testimony, both Mr. MacDonald and Mr. Griffiths agreed that this statement does not suggest that C-84 was not willing to proceed. Mr. Griffiths explained that Constable White did not advise him about the willingness of each complainant individually but rather told him that collectively all of the complainants, other than Ms Antoine, were unwilling to proceed.

Mr. Griffiths also testified that there was no discussion with Constable White about difficulties he was having in getting witnesses to come forward and whether he could get them to come forward by some other means. Mr. Griffiths also admitted that he did not have a specific recollection today of Constable White telling him that all complainants other than Ms Antoine did not want to proceed. However, Constable White's notes of the meeting on October 19 do mention "the fact that none of complainants were willing to make a formal compl[aint]."

It is logical that information about whether or not an alleged victim wishes to make a formal complaint would be within the knowledge of the investigating officer, and therefore I believe that Mr. Griffiths was so advised by Constable White. It is unfortunate, however, that more was not done in respect of the allegations, such as notifying the CAS about them.

Should the CAS Have Been Notified?

The Director of the Children's Aid Society, Richard Abell, was not provided with the brief for this investigation. Apart from being informed that Ms Antoine made allegations against Mr. Keough, he was not given the names of additional alleged victims or abusers. He testified that, having since seen the brief, he believes it is something he should have reviewed at the time given the extent of the allegations: "If I could do it over again, I would have pressed much harder to get the details of his findings. I didn't and that was a failing of mine."

Mr. Abell suggested that had the CAS known of the allegations made during Constable White's investigation, an effort could have been made to connect with the alleged victims to obtain additional information and provide them support. Knowledge of the allegations would also have given Mr. Abell a different picture of Ms Antoine and "a more sympathetic picture of the entire situation." In addition to being able to reach out to some of these former wards, having this information would have allowed Mr. Abell to take steps internally to satisfy himself that such circumstances would never arise again. In particular, he could have reviewed what had happened in the past and, even if the police did not take action, the CAS in its role as an employer could have done so.

At the time he provided his opinion, Mr. Griffiths did not consider sending a letter or report to the Director of the CAS. He testified that in retrospect, perhaps he viewed the issue too narrowly: "I was being consulted about a specific issue. I thought I was responding to that issue in returning the material to Officer White ... I would hope if this came to me today it would be reported to the CAS." In hindsight, Mr. Griffiths believes that perhaps he should have reported to the CAS or suggested the police do so.

There were two reporting issues that arose in this case. The first is the duty to report allegations of abuse of children to the CAS. Mr. Griffiths was not the only witness to testify that there was a lack of clarity surrounding the obligations under the duty to report. The duty to report issue was further complicated in this situation by the fact that allegations were made against individuals who were or had been employed by the CAS or who were otherwise supervised by them, as the agency they were to report to. Since this situation arose, the Child Protection Protocol: Coordinated Response in Eastern Ontario was drafted in 2001. This protocol provides direction when an investigation involves potential conflicts of

interest and, in particular, when complaints are made against employees of the CAS. I am pleased that this protocol now addresses this situation.

The second reporting issue that arose was whether the CAS should be contacted in its role as the employer of the individuals accused of abuse. There is an understandable concern about reporting the results of an investigation to third parties, especially an employer, in cases where no charges are laid. Mr. Griffiths acknowledged this concern and said that if he found himself in that situation again he would consider that issue before he would, for example, notify the CAS. In my view, the protection of children trumps the privacy interests of any employee who in the course of employment with a public institution works with children.

Murray MacDonald's Advice During Investigation of David Silmsen's Complaint

The complaint made by David Silmsen to the Cornwall Police Service in 1992 regarding allegations of sexual abuse by Father Charles MacDonald and probation officer Ken Seguin has been covered in extensive detail in Chapter 6, on the institutional response of the CPS. Cornwall Crown Attorney Murray MacDonald interacted with CPS officers about the investigation into Mr. Silmsen's allegations. He also provided an opinion not to proceed with charges once Mr. Silmsen indicated that he did not want to continue with or participate in the criminal investigation.

Murray MacDonald was appointed Crown attorney for Cornwall in 1992. Early in his career, he gained experience in the prosecution of historical sexual assault cases through his work on cases arising out of the St. Joseph's Training School investigation. He was one of five members on the prosecution team led by Robert Pelletier. Because of this experience, Mr. MacDonald was familiar with some of the unique characteristics of victims of childhood sexual abuse, including their reluctance to disclose allegations and the fact that many victims provide incremental disclosure.

Investigative Advice to Constable Heidi Sebalj

As discussed in Chapter 6, Constable Heidi Sebalj met with Crown Attorney MacDonald only once during her investigation, on March 2, 1993, according to her notes. However, Mr. MacDonald recalls having numerous meetings with Constable Sebalj.

According to Mr. MacDonald, Constable Sebalj first met with him in February 1993 and filled him in on the case. It was an informal meeting. He recalled that they met to discuss this case between seven and ten times between February and

August 1993. Most of these meetings were between February and April or May; he saw her only once in June or July because she was attending a course at the Ontario Police College or she was otherwise absent. He disagreed with the suggestion that Constable Sebalj was not actively involved in the investigation between late April and August 1993. He thought there was follow-up “that had gone nowhere” and that she was on vacation and attending Ontario Police College part of that time. In considering the institutional response of the Cornwall Police Service, I found that no work was done on the case during these months.

According to Mr. MacDonald, the first two meetings were close together and subsequent meetings were on a weekly or bi-weekly basis. He testified that this number of meetings between the Crown and investigating officer was “unusual” but was due to unusual circumstances. This was not a “run of the mill assault case” and it became more complex every time he and Constable Sebalj spoke. Although the case was not legally complex, factually it took many “twists and turns.”

Staff Sergeant Luc Brunet, who was Constable Sebalj’s supervisor, was aware that she was having informal meetings with Mr. MacDonald. Although her notes indicate only one meeting, Staff Sergeant Brunet recalled Constable Sebalj telling him on more than one occasion that she had met with the Crown attorney.

Most of these meetings between Crown Attorney MacDonald and Constable Sebalj were informal, often in hallways. Crown attorneys were in court four or five days a week and the only way police could get in touch with them was to meet at the courthouse. Mr. MacDonald did not take notes of these meetings and did not recall Constable Sebalj taking notes either. He testified that his practice changed after this case.

During the first meeting, the CPS Constable advised him that she was having difficulty with the case, which she felt was sensitive because of the target of the investigation. According to Mr. MacDonald, Constable Sebalj told him she was not close to having reasonable and probable grounds and she wanted to know where to go to help construct those grounds. She indicated she had just started her investigation. Mr. MacDonald believes she was seeking his assistance in part because this was a high-profile matter with a high-profile accused. He had the impression that her difficulties partly stemmed from Mr. Silmsner and his personality as well as the nature of the allegations.

Mr. MacDonald recalls that in either the first or second meeting, Constable Sebalj showed him the handwritten statement provided by David Silmsner. In this statement, Mr. Silmsner made allegations against Father MacDonald and probation officer Ken Seguin. Murray MacDonald knew Mr. Seguin and had dealt with him in a professional capacity for years. He did not know Father MacDonald but understood he was an active priest.

Murray MacDonald read the statement and thought there was a need for more detail about a number of things. In particular, he was concerned about a reference to a judge being present when criminal conduct was taking place. There is in fact no reference to a judge in Mr. Silmsen's statement. Mr. MacDonald testified that if the reference was not in the statement then Constable Sebalj told him about the judge. There is also no reference to a judge in Constable Sebalj's notes. Despite this, Mr. MacDonald is certain that Constable Sebalj knew in February or early March that a judge had been implicated in Silmsen's allegations. That was the first person he instructed her to get more information about. I have not seen or heard any evidence from Constable Sebalj's investigation or the evidence given by Mr. Silmsen himself that suggests that he referred to a judge in February or March 1993. As discussed in Chapter 12, on process, I did not have the benefit of Constable Sebalj's evidence.

Mr. MacDonald also wanted more information about the probation officer. In his statement, Mr. Silmsen did not provide any details of the abuse by Mr. Seguin. Mr. MacDonald instructed Constable Sebalj to ask the complainant to provide more information about the probation officer.

As discussed in detail in Chapter 6, on January 28, 1993, Sergeant Ron Lefebvre, Constable Sebalj, and Constable Kevin Malloy interviewed Mr. Silmsen. Although Constable Sebalj told Murray MacDonald she had met with Mr. Silmsen before their first meeting, he doesn't recall if he knew about this lengthy interview of Mr. Silmsen in January 1993. Constable Sebalj never showed him the transcript of that interview or the officers' notes. In fact, the only document Mr. MacDonald saw between February and September 1993 was the handwritten statement from Mr. Silmsen. As will be seen later, these notes were important in terms of providing details about the allegations against Mr. Seguin.

On March 2, 1993, Constable Sebalj met with Mr. MacDonald at the Criminal Investigation Bureau (CIB) office and he asked her about the progress of the investigation. After providing him with some details of her investigation, Constable Sebalj's notes indicate that Mr. MacDonald became concerned about her grounds. He suggested that she meet with the victim and asked to be kept up to date. Mr. MacDonald's recollection of this meeting is that Constable Sebalj had some bad news about some of the investigative follow-up she was doing. He said they discussed strategy with respect to the investigation, and the meeting was not just a two-minute meeting, as Constable Sebalj's note suggests.

Although Staff Sergeant Brunet did not recall knowing that the Crown had concerns about Constable Sebalj's reasonable and probable grounds, he knew she had concerns about her grounds throughout the investigation. These concerns started before March 2, 1993, because she was sharing her concerns with Staff Sergeant Brunet in early February.

Mr. MacDonald testified that Constable Sebalj was not looking for legal advice but wanted suggestions about where to turn next in collecting evidence. Mr. MacDonald did not suggest to her until weeks later that she should confer with her supervisor. He thought Constable Sebalj came to him for advice because the Cornwall Police Service was encumbered by illness and the staff was overwhelmed with work. She was very busy, as was her supervisor, Staff Sergeant Brunet, so Mr. MacDonald thought it would be more expedient if he “cut to the chase” and advised her to obtain certain additional information.

Murray MacDonald testified that he never considered speaking to the Chief of Police or the Deputy Chief about the investigation in the context of resources in the CIB. He did not consider going to any of Constable Sebalj’s superior officers to discuss her ability to conduct the investigation. Constable Sebalj seemed to be complying with his requests and “showing due diligence and a keen interest in the case.”

Mr. MacDonald characterized Constable Sebalj as a new officer starting out with average ability but who got better and more skilled as time went by. The Crown attorney felt that she was over her head and needed guidance from someone, and he thought he could help her in this case to keep her head above water. Mr. MacDonald expected that Constable Sebalj might have gone to Staff Sergeant Brunet for assistance earlier if he had not been trying to provide her with investigative help. Looking back, he agrees that Constable Sebalj would have been better served getting advice from Staff Sergeant Brunet, since he was a better investigator than Mr. MacDonald: “[T]hat’s his job.” Mr. MacDonald testified that he accepts responsibility for his advice: “I took on the role of trying to advise on investigating and if she took any wrong turns as a result of my advice in terms of investigating I take responsibility for that, not Heidi.”

I am of the view that Crown counsel and police officers should be encouraged to collaborate. The current Crown practice memorandum on the relationship between Crown counsel and the police provides, “While the mutual independence of the relationship is of fundamental importance, account should also be taken of the need for mutual co-operation and reliance at all stages of an investigation and court proceedings.” It also states, “While it would be generally inappropriate for Crown counsel to provide the overall direction for an investigation, it is proper for Crown counsel to advise the police on legal issues.” I believe that Mr. MacDonald may have gone too far in providing direction to the investigation, which perhaps should have come from others at the CPS. He was doing so without the benefit of a Crown brief and without having reviewed any of the notes or witness statements. The problem was compounded by the fact that Constable Sebalj was a relatively new investigator, with little supervisory

support, dealing with allegations of historical sexual abuse that were bound to become a high-profile case if charges were laid.

According to Mr. MacDonald, the first thing he told Constable Sebalj was to get a more detailed statement. He also suggested that she seek out other altar boys and records such as school records and information about where Mr. Silmsen's family lived at the time of the alleged abuse. Constable Sebalj's notes show that she called Mr. Silmsen and requested that he contact the school board to obtain records as early as February 3, 1993. Mr. MacDonald could not recall if he was aware that she had done this by this time.

At no time did Mr. MacDonald suggest to Constable Sebalj that she interview Father Charles MacDonald. According to Murray MacDonald, "she had nothing to interview him on." He thought Constable Sebalj advised him that Malcolm MacDonald, counsel for Father MacDonald, told her that Father MacDonald was prepared to take a polygraph, and Murray MacDonald told her not to do the polygraph.

As mentioned above, the Crown attorney was aware that Mr. Silmsen had made an allegation against probation officer Ken Seguin but had not provided any additional details. Mr. MacDonald testified that he asked the Cornwall Police Service to look more closely at Mr. Silmsen's reasons for not wanting to proceed against Mr. Seguin. He did not ask the officers to inquire into whether there had been any contact between Mr. Silmsen and Mr. Seguin. Mr. MacDonald did not recall turning his mind to the question of whether it was possible Mr. Seguin had exerted influence over Mr. Silmsen, the alleged victim.

Should the Children's Aid Society Have Been Notified of David Silmsen's Statement?

Murray MacDonald was aware that Mr. Seguin was a probation officer in Cornwall and that Father MacDonald was an active priest. Both of these professions involve regular contact with children and youth. With respect to Father MacDonald, Murray MacDonald did not think there was enough evidence to report the matter to the Children's Aid Society at the time. He "didn't think the CAS would have the success that the CPS could have." This statement exhibits a lack of understanding about the role of the CAS. Unlike the police, the CAS is not concerned with trying to secure a conviction but rather with the protection of children.

Regarding the allegations against Mr. Seguin, in Murray MacDonald's view there was no obligation to notify the CAS of an unsubstantiated, unfounded allegation. He thought there was not sufficient information regarding Mr. Silmsen's allegation against Mr. Seguin to report to the CAS. Again, the Crown attorney did

not have any of the details provided to the CPS officers during their interview of Mr. Silmsers on January 28, 1993.

The Crown attorney testified that he knew about the duty to report and thought he understood it well, but in hindsight he agreed that after reading Mr. Silmsers statement there was a duty to report. The issue of giving notice to the CAS did not arise until Mr. MacDonald conferred with Staff Sergeant Brunet and later Chief Claude Shaver in the fall of 1993. Mr. MacDonald did not have any concerns about providing the CAS with the information; he just did not know how he would articulate a report at that point. It is unfortunate that he did not suggest to Constable Sebalj or Staff Sergeant Brunet that the CAS be notified.

Murray MacDonald Learns David Silmsers Is Negotiating With the Church

At one point, Constable Sebalj advised Murray MacDonald of a negotiation between Mr. Silmsers and the Diocese. He thinks he was told about this during their second or third meeting in approximately late February or early March 1993: “She told me that he had expressed to her the desire to commence a lawsuit.” Although in his statement to the Ontario Provincial Police (OPP) in July 1994, he said that Constable Sebalj told him about this in March or April 1993, Mr. MacDonald testified that he thinks the reference to April was wrong and it was more likely to have been March.

Mr. MacDonald’s impression was that Mr. Silmsers took the initiative to contact the Church. It is clear in my mind that although Mr. Silmsers first reported the matter to the Church, it was the Diocese that initiated the settlement discussions. Mr. MacDonald did not know at the time if Mr. Silmsers had a lawyer but presumed he did. He recalls speaking in the spring of 1993 to Don Johnson, a lawyer in Cornwall, who said that he had been approached by Mr. Silmsers but was not interested in representing him. Although the Crown attorney was aware there was direct contact between Father MacDonald’s lawyer, Malcolm MacDonald, and Mr. Silmsers, he presumed another lawyer was involved during settlement negotiations because he thought the minutes of settlement had to go to a lawyer for an independent opinion.

Mr. MacDonald initially thought Sean Adams was Mr. Silmsers’s lawyer. Mr. MacDonald later learned that he was involved only in providing independent legal advice at the conclusion of the settlement and was not involved in the negotiations. The extent of his involvement was to explain the document to Mr. Silmsers and witness his signature.

The Crown attorney was also told that Constable Sebalj had conferred with Malcolm MacDonald. In Murray MacDonald’s experience, it is not often that the accused’s lawyer contacts the investigator during the investigative stage:

“I wouldn’t say it’s the only time I’ve ever seen it happen, but it’s very rare.” Murray MacDonald told Constable Sebalj to keep him apprised of any information Malcolm MacDonald relayed to her. He said he would not have discouraged her from speaking with him and probably would have said she should use him as a source of information. Police investigators should be careful when speaking to defence counsel during their investigation in order to guard against being influenced by defence counsel or relying on them for evidence that should be independently ascertained.

Murray MacDonald’s Discussions With Malcolm MacDonald and Jacques Leduc

Murray MacDonald received calls from Malcolm MacDonald two or three times regarding this matter. Initially Murray MacDonald was under the impression that Malcolm MacDonald was the lawyer for the Church, but Constable Sebalj informed him that he represented Father MacDonald. In his statement to the OPP in July 1994, Murray MacDonald said that Malcolm MacDonald first contacted him approximately four to six weeks before the settlement was reached. During his testimony, however, he stated that this time estimate was incorrect and that the first time they spoke was before July, probably in April. Murray MacDonald knew Malcolm MacDonald had been a Crown attorney. He did not know him on a personal level but dealt with him professionally on a weekly basis.

The first call with Malcolm MacDonald was brief. Malcolm MacDonald told Murray MacDonald that Mr. Silmsers had cause to be angry with the Church for not supporting him and his mother years ago. Murray MacDonald presumed he meant that the priest and the Diocese were inclined to negotiate with Mr. Silmsers because they felt he had been wronged generally by the parish or by a priest.

Murray MacDonald’s impression was that Malcolm MacDonald was trying to stay on “high ground” in disclosing to the Crown that he was trying to pursue a civil settlement during the course of a criminal investigation. Murray MacDonald thought Malcolm MacDonald was doing this because he knew that although this was lawful, it could still have potential ramifications for the criminal investigation, and he was trying to give the Crown notice and proceed in an open fashion.

The second call Murray MacDonald received from the priest’s lawyer was in late August or early September 1993, immediately after Constable Sebalj told him that the settlement had been reached. During this call Malcolm MacDonald advised that a settlement had been reached. He also said he could have easily discredited Mr. Silmsers in a criminal trial; they considered it a nuisance claim and so settled and gave the complainant some money for counselling. According to Murray MacDonald’s evidence, the tenor of this conversation was different from

the first call, and he felt uncomfortable. It concerned him because it was more “dismissive of the complainant’s” credibility and also left him with the impression that Malcolm MacDonald could believe that the settlement would also end the criminal case. Murray MacDonald testified, “So I specifically told him, ‘As you know, this will not end the criminal case,’ because I wanted to make it very clear at this point, now that I was sensing this new attitude.”

His message was that the criminal investigation would continue and that charges might be laid. He believed that Malcolm MacDonald got that message loud and clear. The fact that Malcolm MacDonald appeared to believe the civil settlement would end the criminal case did not raise a red flag for the Crown attorney: “I thought that he had the impression from the discussions with the complainant or his lawyer that if he got the settlement that that’s all he wanted.” Murray MacDonald also thought that Malcolm MacDonald was presuming that as a result of the settlement, the Crown and police would no longer have an interest in the matter. It did not cross Murray MacDonald’s mind that Malcolm MacDonald had obstructed justice.

This is difficult to understand. If Malcolm MacDonald was contacting the Crown attorney during the investigation and before knowing whether charges would be laid, Murray MacDonald should have been suspicious that something was not right. By the time Murray MacDonald received the second phone call from Malcolm MacDonald he should have known that the civil settlement was related to the criminal investigation. We now know that during this second phone call, Malcolm MacDonald knew the release contained a clause providing that the settlement would end the criminal investigation.

Murray MacDonald also had contact with Jacques Leduc, a lawyer representing the Diocese. He believed this was after his second call with Malcolm MacDonald. Murray MacDonald did not know Mr. Leduc was involved until this conversation, although he was not surprised, as he knew Mr. Leduc acted for the Diocese on other matters. Murray MacDonald knew Mr. Leduc professionally but not socially.

According to Mr. MacDonald, Mr. Leduc contacted him to advise him that the Church had reached a settlement with Mr. Silmser. The tenor of this call was akin to that of the first call with Malcolm MacDonald. Murray MacDonald thought Mr. Leduc called him in order to be transparent about the negotiations and demonstrate that he was not trying to interfere with the police investigation. However, because of the second call received from Malcolm MacDonald, Murray MacDonald thought it was important that he also caution Mr. Leduc that the criminal case would continue. Both lawyers told Murray MacDonald that they understood this. I am of the view that Murray MacDonald was too trusting in these circumstances.

Although there is no mention of Murray MacDonald's conversation with Mr. Leduc in his statement to the OPP in 1994, the Crown attorney is certain he spoke to the Diocese lawyer about this matter. Mr. Leduc testified that he had a brief meeting with Murray MacDonald at the Provincial Court before the settlement with Mr. Silmsner was concluded. Mr. Leduc testified that he told Mr. MacDonald that he acted for the Diocese and was about to settle a civil claim with Mr. Silmsner. He also advised him of the circumstances of the settlement. Mr. Leduc testified that Mr. MacDonald's response was "do what you have to do." Murray MacDonald also told him that if the criminal process continued it would do so notwithstanding the civil settlement.

Although there is some discrepancy in the evidence about how they communicated, I accept that Murray MacDonald and Mr. Leduc had a conversation and that both lawyers have roughly the same recollection of what was said. The only distinction between the two accounts is that Mr. MacDonald recalls that Mr. Leduc called him after the matter had been settled and Mr. Leduc recalls that the contact was before it was settled. If it was after the matter had already been settled, Murray MacDonald should have been suspicious of the reason for the call.

In his statement to OPP, Malcolm MacDonald said he went to see Crown Attorney MacDonald and discussed the settlement. When Malcolm MacDonald said that the settlement would cover the totality of the matter, both civil and criminal, Murray MacDonald replied something to the effect of "well fine, if everybody's happy, I'm happy." Murray MacDonald strongly disagrees with this statement and flatly denies that he had knowledge that the settlement would stipulate that both civil and criminal matters would come to an end. I find that Murray MacDonald did not have knowledge that the settlement involved the criminal proceedings.

Constable Heidi Sebalj Locates Additional Victims

As discussed in Chapter 6, Constable Heidi Sebalj interviewed individuals in March and April 1993 who also alleged that Father MacDonald had sexually assaulted them in their youth.

According to Murray MacDonald, on the eve of the settlement, Constable Sebalj contacted him and told him that her investigation had come up with an indication that Father MacDonald had "homosexual tendencies." She had spoken to someone who was reluctant to assist the police investigation but who claimed to have had homosexual relations with Father MacDonald. In his 1994 OPP statement, Murray MacDonald noted that this was the first time in many contacts he had with Constable Sebalj where there was "something in favour of the

complainant, as oppose[d] to against his credibility.” He further stated that he asked if the police now had reasonable and probable grounds and was told they still didn’t feel they had enough to believe Mr. Silmsers, who by this time “was telling them to go away anyway.”

Murray MacDonald’s recollection is that Mr. Silmsers had provided Constable Sebalj with two or three names and early on she determined that they did not provide corroborative evidence. On the eve of the settlement, Constable Sebalj told him about two people who she had heard might have been victims of Father MacDonald or have knowledge of Silmsers’s allegations. As mentioned in Chapter 6, one of them alleged that Father MacDonald had abused him but did not want to become involved in the matter. The other person did not want to be a complainant but was willing to testify about being abused by Father MacDonald.

It is apparent from Constable Sebalj’s notes that in March 1993 C-56 and C-3 alleged that Father MacDonald had sexually abused them. Murray MacDonald was not aware of this information at the time. In April 1993, Constable Sebalj talked to an individual who did not allege any abuse by Father MacDonald but said that “under his bed there was a box full of skin mags.” He later said that Father MacDonald had taken him and his friend to his bedroom and shown them the magazines. They were eleven or twelve at the time. When he testified at the Inquiry, Murray MacDonald could not recall if he was told about this.

He testified that the police had moved from weak to strong suspicions regarding Father MacDonald because of one witness in particular. He acknowledged that by September 1993, there was the possibility that there were other victims out there. They had not yet been identified, and Murray MacDonald said that Constable Sebalj was trying to find them. He knew it was common in cases of child sexual abuse that a perpetrator abused more than one child. He also knew that a large number of victims do not have the wherewithal to make it to criminal court as complainants and many do not even go to the police at all.

Mr. MacDonald testified that despite the information Constable Sebalj received from C-3 and C-56, she never formed a subjective view that she had reasonable and probable grounds to lay a charge before Mr. Silmsers insisted he did not want to proceed further.

Murray MacDonald Discusses the Settlement With CPS

On or around September 8, 1993, Murray MacDonald met with Staff Sergeant Brunet and Constable Sebalj in Staff Sergeant’s Brunet’s office. The CPS officers reported that they had spoken to Mr. Silmsers and he did not want to continue with the criminal investigation.

Mr. MacDonald was shown a copy of correspondence the Cornwall Police Service received from Malcolm MacDonald enclosing a statement from Mr. Silmsers saying he no longer wished to proceed with criminal charges. This struck Murray MacDonald as reflecting Malcolm MacDonald's belief that the police and Crown would no longer be inclined to proceed with the criminal investigation after the civil settlement was reached. Murray MacDonald was concerned that Malcolm MacDonald did not seem to have listened when Murray MacDonald told him that the criminal matter would continue regardless of the civil settlement.

It was clear to Murray MacDonald that Mr. Silmsers's decision to withdraw the complaint was tied to the settlement. Mr. MacDonald presumed that Mr. Silmsers decided after receiving the money that he was not interested in proceeding with the criminal case any further. Alternatively, he may have felt that because of the civil settlement, the police would no longer be interested in the case. That is why Mr. MacDonald sent the officers back to advise Mr. Silmsers that he was incorrect in his presumption that the police were not interested in continuing with the investigation.

According to Mr. MacDonald, Constable Sebalj told him that the second time she saw him, Mr. Silmsers displayed more anger and said, "Why should I do anything for you guys? You didn't do anything for me when I needed you, so why should I cooperate now?" On September 13, Constable Sebalj advised Mr. MacDonald of a meeting she was to have with Mr. Silmsers later that morning. According to her notes, Mr. MacDonald said she should satisfy herself that Mr. Silmsers "acted of his own free will." Mr. Silmsers did not show up for the meeting.

Mr. MacDonald presumed that if the settlement had not been reached, Mr. Silmsers would have continued his dealings with Constable Sebalj. However, he did not think to look at the settlement document to see if it precluded Mr. Silmsers from continuing with the criminal investigation. He assumed that Mr. Adams would have told Mr. Silmsers that any bar to criminal proceedings is unenforceable and illegal. Mr. MacDonald still believed all of the lawyers involved in the settlement were acting diligently and in good faith.

Mr. MacDonald testified that he did not turn his mind to the possibility of undue influence. He recognized there was a power imbalance but thought the settlement was part of Mr. Silmsers's "agenda that he'd set out to do and that he had succeeded." He did not think the power imbalance would have consequences, except reducing the amount of the money Mr. Silmsers received from the settlement. Although Murray MacDonald considered the possibility that Father MacDonald and the Diocese hoped that if they reached a civil settlement, Mr. Silmsers might give up or soften his story, he did not consider that they were not likely to negotiate a settlement without some certainty that this matter would be

concluded. Murray MacDonald testified he did not turn his mind to the possibility that the Diocese and Father MacDonald were trying to keep the allegations out of the public eye.

Correspondence Between Staff Sergeant Luc Brunet and Murray MacDonald in September 1993

As discussed in detail in Chapter 6, Staff Sergeant Brunet wrote to Murray MacDonald on September 9, 1993, stating that the Cornwall Police Service had received a letter from Malcolm MacDonald. A statement from Mr. Silmsner was attached, indicating that he had received a civil settlement and no longer wished to proceed with criminal charges. Staff Sergeant Brunet wrote that he understood the Crown's office did not prosecute without the full cooperation of the victim and requested Murray MacDonald's direction in this regard.

Staff Sergeant Brunet testified that when he spoke to Murray MacDonald and wrote this letter, he had not reviewed Constable Sebalj's notes, had not seen any witness statements, and had not put his mind to whether there were reasonable and probable grounds to lay charges.

Although it is not mentioned in Staff Sergeant Brunet's letter, Mr. MacDonald recalls that they discussed the issue of reasonable and probable grounds. Staff Sergeant Brunet does not recall discussing reasonable and probable grounds or the strengths and weaknesses of the case with Murray MacDonald. However, he testified it is possible they discussed more than just the uncooperative complainant.

Mr. MacDonald testified that at some point Staff Sergeant Brunet asked him for a letter. Mr. MacDonald did not consider at that time that there might be a problem with the legality of the settlement or consider whether it should be investigated. Unfortunately, he did not think to see a copy of the settlement before writing his opinion letter.

On September 14, 1993, Murray MacDonald wrote a letter to Staff Sergeant Brunet as requested. The letter reads:

It is our policy not to compel victims of sexual crimes to proceed against their wishes. Also, the officer was tentative on the issue of R. and P.G. before this so-called "settlement". Grounds are now even further obfuscated by the fact that he has evidently used this threat of criminal prosecution as a means of furthering his efforts to gain monetary settlement.

It is evident that Mr. Silmsner's allegations suggest a very serious breach of trust by the alleged perpetrator. These concerns can, of course, be put to the suspect's principals if you deem it appropriate. However, this case

is fraught with (due to his own conduct) a very non-credible complainant, saddled with an evidence ulterior motive for making these allegations.

It is, as you are aware, exceptionally difficult to put supportive victims through the sexual offence trial process. It is for policy reasons, not in the public interest to put a reluctant witness through the same process. This is especially so when that reluctant witness will be “crucified” in cross-examination.

According to Murray MacDonald, Staff Sergeant Brunet wanted a “CYA letter” because his superiors were looking for answers about the status of the investigation and why it had taken so long. This is why Mr. MacDonald addressed both the issue of not forcing a victim to testify and the issue of reasonable and probable grounds. Mr. MacDonald wanted to show that this case did not turn on whether Mr. Silmsen could be forced to testify but also on the fact that it had not yet reached the threshold of having reasonable and probable grounds.

Murray MacDonald acknowledged that he had presumed bad faith on Mr. Silmsen’s part regarding his comments about Mr. Silmsen using the threat of criminal prosecution as a means of further his efforts to gain a monetary settlement. He presumed that Mr. Silmsen had used him and the police to get his money. In his testimony, Mr. MacDonald admitted he was wrong. Mr. Silmsen testified that he wanted criminal charges to be laid and only after he was told the criminal investigation was not going anywhere did he decide to go forward with the civil settlement.

Mr. MacDonald refers in his letter to the “so-called ‘settlement.’” He does not recall what he was trying to convey by putting the word “settlement” in quotes. He testified he had no knowledge, and presumably no suspicion, about an illegal clause at this point. If he suspected an illegal clause, he would have wanted to see the settlement document. Mr. MacDonald testified that if he were consulted about a civil settlement in the course of a criminal investigation again, he would do things differently, including asking to see settlement documents.

Murray MacDonald acknowledged that he made several statements in the letter about Mr. Silmsen’s credibility and motivations that were statements of opinion reported to him primarily by Constable Sebalj. He agreed that the opinions expressed about Mr. Silmsen and his allegations are very negative. Mr. MacDonald never met with Mr. Silmsen to assess his credibility.

Mr. MacDonald was not aware of a number of matters when he wrote this letter. However, he testified that had he known of these facts, he doubts the opinion letter would have been much different. The conclusion would have been

the same although he may have drafted the letter differently. In particular, Murray MacDonald acknowledged that the statement that Mr. Silmser used the threat of criminal prosecution as a means of further his efforts to gain a monetary settlement was “a very harsh indictment on poor Mr. Silmser” and he would have drafted it differently had he been in possession of some or all of those facts.

When Mr. MacDonald wrote this letter, he had not been provided with a Crown brief. He was comfortable relying on Constable Sebalj’s verbal summaries of what occurred in the investigation. Murray MacDonald conceded that the practice he applied then was not the best practice:

It was what I thought to be the only option, but I will certainly concede to you that our practice today, personally as a result of what we’ve learned from this case, is the best practice.

When Mr. MacDonald wrote this letter he thought it was accurate. He did not think this letter would automatically end the investigation of Father MacDonald. He thought Chief Shaver would have insisted on continuing if he had anything else to work with: “I don’t think we could say the file was closed but the file was certainly in abeyance.”

It is apparent that Murray MacDonald was not aware of all of the details of this investigation when he prepared his opinion letter. Given his vast experience with victims of historical sexual abuse and the particular difficulties they have in disclosing allegations, and given his knowledge of the existence of other alleged victims, I find the tone and content of his opinion letter to Staff Sergeant Brunet troubling.

Information Murray MacDonald Did Not Have

It is clear that although Crown Attorney Murray MacDonald communicated with Constable Heidi Sebalj during the course of her investigation of Mr. Silmser’s complaint, the Crown attorney was not aware of many of the details of the investigation prior to writing his opinion letter in September 1993. Murray MacDonald never met with Mr. Silmser and received the majority of his information from Constable Sebalj and perhaps some from Staff Sergeant Brunet. Murray MacDonald did not know:

- that Silmser did not want a female investigator;
- the details of the January 28, 1993, interview of Silmser, including details of his allegations against Mr. Seguin;
- that C-56 told Heidi Sebalj on March 9, 1993, about an incident with Father MacDonald; or
- that C-3 made an allegation against Father MacDonald in March 1993.

He also did not have the benefit of reviewing the Crown brief Heidi Sebalj subsequently prepared. According to Murray MacDonald, the practice in 1993 was not to receive a prepared package of materials before charges were laid. Occasionally the Crown would look at the statement or an officer's occurrence report, but usually the Crown received a verbal report as opposed to a prepared package of documents.

Murray MacDonald testified that he was also not aware of the following events:

- that Mr. Silmsers met with Monsignor Peter Schonenbach in early December 1992 and Monsignor Schonenbach had written a letter to Monsignor Donald McDougald in which he indicated he believed Mr. Silmsers to be credible;
- that Monsignor Schonenbach wrote that Mr. Silmsers told him that "for starters" he was looking for an apology from Father MacDonald to show his mother;
- that Mr. Silmsers told Constable Sebalj he was contacted by the Diocese and they wanted to meet with him on February 9, 1993;
- the details of the meeting Mr. Silmsers had with members of the Diocese, including that he said they believed him and offered him psychological help;
- the Diocese protocol for dealing with allegations of abuse against the clergy; or
- that Monsignor McDougald called Mr. Silmsers on February 15, 1993, and wanted to discuss a settlement.

Regarding the settlement between the Diocese and Mr. Silmsers, Murray MacDonald was not aware:

- that Mr. Silmsers was unrepresented;
- whether a Notice of Action had been filed; or
- the wording of the settlement agreement.

Mr. MacDonald believed that Constable Sebalj had an obligation to tell him everything relevant before he rendered an opinion, and he presumed she was doing so. He had been relying on officers' verbal updates for five years: "[I]t's the way that we commonly worked." In this instance Constable Sebalj appeared to remember everything and had answers for every question he put to her. He thought she was being very diligent in providing him with information.

Mr. MacDonald testified that if Constable Sebalj didn't tell him everything chronologically or in detail, as she should have, he should take some responsibility

for giving her the impression that this was just a reasonable and probable grounds exercise and not a full review of the case. He should have insisted on a full brief before providing an opinion in this matter.

No Outside Crown Is Consulted

Sometime between February and September 14, 1993, Murray MacDonald spoke with Crown Attorney Robert Pelletier. Mr. MacDonald testified that he told Mr. Pelletier that if the police laid charges against the priest, he would have Mr. Pelletier review the case to determine if there was a reasonable prospect of conviction. According to Murray MacDonald, the reason for involving Mr. Pelletier was not because he had a legal conflict but because he was concerned about an appearance of bias.

One to two years prior to this, Mr. MacDonald had sat on a Diocesan committee and had recommended the Diocese to “do exactly the opposite of what the Church did in this instance.” He recommended that the Church should be transparent, cooperate, and allow the police investigation to take place at the outset. This recommendation was ultimately not adopted, and Mr. MacDonald was concerned that if he was involved in this prosecution, the Church would have the impression that he was “leading the charge” or advocating the position he had recommended: “I didn’t want to be perceived as a witch-hunter.” The perceived bias was that Murray MacDonald was *against* the Church, not *for* the Church.

Mr. MacDonald thought that because of Mr. Pelletier’s experience with the St. Joseph’s Training School prosecutions and his knowledge of the Church’s operations, he would be the best choice to take the case forward.

Murray MacDonald’s position was that Mr. Pelletier was to review the case only once the police determined that they had reasonable and probable grounds to lay a charge. I heard a great deal of evidence from other individuals involved and reviewed exhibits suggesting that at least Staff Sergeant Brunet, Mr. Pelletier, and Constable Sebalj thought an outside Crown was to be consulted on the issue of reasonable and probable grounds. In a letter from Mr. Pelletier to OPP Detective Inspector Tim Smith dated September 15, 1994, Mr. Pelletier states that Murray MacDonald contacted him in the summer of 1993 and told him it might become necessary at some point for him to “review the matter with a view to determining if charges should be laid.” Mr. Pelletier had no recollection of this telephone call with Mr. MacDonald but testified that he has no reason to doubt the accuracy of this memo.

It appears that Constable Sebalj was also under the impression that an outside Crown would review the case prior to charges being laid. Her notes indicate that on August 24, 1993, she advised Mr. Silmsen that she was waiting to have a meeting with an outside Crown to review the case. Mr. MacDonald speculated that

she said this because she was trying to relay to Mr. Silmsen that she was still supportive of the investigation. But when OPP Detective Constable Michael Fagan interviewed Constable Sebalj in June 1994, she stated that Murray MacDonald had said that “when it came down to a final review and decision an outside Crown would be contacted but I never spoke to an outside Crown.”

By way of another example, in a conversation with Staff Sergeant Brunet on August 29, 1993, Constable Sebalj mentioned that she was waiting for the Crown’s office to get back to her and that Murray MacDonald was “trying to get her an outside Crown Attorney that she can meet.” Mr. MacDonald testified that Constable Sebalj never asked him to set up a meeting with an outside Crown and he told her an outside Crown would be available when they needed one.

Murray MacDonald did not think that there was a “disconnect” between him and Heidi Sebalj on the issue of the independent Crown opinion but acknowledged that “it appears so today.” According to Mr. MacDonald, he was waiting for Constable Sebalj to develop reasonable and probable grounds and lay a charge before turning over the matter to Mr. Pelletier for a reasonable prospect of conviction analysis. Mr. MacDonald did not believe the police required any advice on reasonable and probable grounds.

When he was interviewed by the Ottawa Police Service in January 1994, he stated that he was waiting for an indication from the investigating officer that the police had reasonable and probable grounds to lay a charge before he would pass it over to an outside Crown.

Staff Sergeant Brunet recalls Constable Sebalj telling him about Murray MacDonald having a conflict of interest and that they were looking for an outside Crown to assist her. He doesn’t believe she told him what the conflict was about. Staff Sergeant Brunet provided a statement to the OPP in January 2000 in which he discussed a meeting with Constable Sebalj during the summer of 1993 when she said she wanted to see a Crown:

“Well basically, I would like to see a Crown right now. I’m in a position ... I’m not sure, like, I’ve got some credibility issues to deal with, but ... I would like to get some direction in the investigation.” And ... I Ok’d her to go and see Murray, and he made ... arrangements for her to see, I believe, Mr. Pelletier.

Detective Inspector Smith also testified that he understood that Constable Sebalj wanted to review her evidence with an outside Crown and it was going to be Mr. Pelletier.

The meeting between Constable Sebalj and Robert Pelletier never took place. Clearly Crown Attorney MacDonald was of the opinion that he should not make

the decision whether to prosecute the case against Father MacDonald because he could be perceived as having a bias. He was asked whether it might have been prudent in light of these concerns to have another Crown deal with this case from the outset. He testified that he saw no problem in his assisting with the investigation, which he saw as different from taking carriage of the file and making a decision about whether to prosecute. He thought it was appropriate to continue to manage the case until Crown opinion or discretion was required.

Murray MacDonald Meets With Constable Perry Dunlop

In late September 1993, Murray MacDonald met with Constable Perry Dunlop at the courthouse, on Pitt Street. Mr. MacDonald was surprised when Constable Dunlop came in, and he testified that he had not spoken to Constable Dunlop or received a message from him the day before about having a meeting. Mr. MacDonald knew Constable Dunlop personally. He was a colleague of Murray MacDonald's brother-in-law, Randy Millar, and they occasionally went hunting together.

According to Mr. MacDonald, Constable Dunlop seemed to think the Crown did not know about the allegations by Mr. Silmsen. He also raised concerns about Constable Sebalj's investigative techniques and said he thought senior management knew it was not properly investigated and were trying to cover that up. Mr. MacDonald told him that Chief Shaver was aware of the allegation and that he knew about the case. He directed Constable Dunlop to speak with Staff Sergeant Brunet.

Although Constable Dunlop's will-state states that during this meeting, Murray MacDonald said he was not aware of the allegations against Mr. Seguin, Mr. MacDonald does not recall Mr. Seguin's name coming up during this meeting. If it did, he would have advised that he was aware of this allegation.

Murray MacDonald Meets With Chief Claude Shaver and Sergeant Claude Lortie

As discussed in Chapter 6, on September 30, 1993, Mr. MacDonald met with Chief Shaver. Mr. MacDonald testified that he never told the police they could not proceed with or reopen the investigation but would have left the Chief of Police with the impression that there was nowhere to go without a victim.

Mr. MacDonald testified that Chief Shaver was frustrated and angry and that after speaking with him, it was clear that Chief Shaver was going to review the investigation. According to Chief Shaver, his concern was not that the Crown was not recommending a charge or prosecution but that he didn't know where the police could go with the investigation.

Following his meetings with Constable Dunlop and Chief Shaver, Mr. MacDonald met with Sergeant Claude Lortie. Mr. MacDonald recalls that Sergeant Lortie was with Constable Mike Quinn or Constable John Parisien, who were members of the Police Association Executive at the time.

Sergeant Lortie expressed concerns about Chief Shaver's management of the file. Mr. MacDonald had the impression that he was going to be drawn into a labour-management dispute. He was not comfortable with this and told Sergeant Lortie that he was not in a position to comment. Sergeant Lortie testified that the purpose of the meeting was to try and convince Mr. MacDonald that the matter should be pursued. Sergeant Lortie agreed he was taking this issue outside the police force so that influence could be brought to bear by the Crown on the Chief of Police.

In the fall of 1993, Staff Sergeant Garry Derochie had a meeting with Chief Shaver during which Chief Shaver informed him that Murray MacDonald was not fully informed when he gave his opinion to Constable Sebalj and that the Crown attorney's advice might have been different had he possessed all the information. Earlier in this section, I discussed some of the facts that Mr. MacDonald did not know about the CPS investigation.

Murray MacDonald Learns of the Illegal Clause in the Settlement

Murray MacDonald first heard about the illegal clause in the settlement from Charlie Greenwell, a television reporter, sometime in January 1994. Mr. MacDonald thinks he received this call from Mr. Greenwell weeks or even months after his meeting with Chief Shaver. However, since Mr. MacDonald was not entirely surprised by the call, he thinks he had probably received some information shortly before the call.

Interview by Ottawa Police Service in January 1994

In January 1994, the Ottawa Police Service interviewed Mr. MacDonald. According to both Mr. MacDonald and Superintendent Brian Skinner, the meeting was quite brief, no longer than fifteen or twenty minutes. The officers asked Mr. MacDonald about his contacts with Constable Sebalj and Staff Sergeant Brunet. They also discussed his work on the Diocese committee and the reason for the perceived conflict.

The Ottawa Police Service investigation is covered in Chapter 6. As noted in that chapter, Superintendent Skinner and Staff Sergeant William (Bill) Blake were critical of Mr. MacDonald's conduct in the Silmser investigation and concluded that after declaring his conflict of interest, he should have referred the investigation to another Crown attorney. Mr. MacDonald did not think the

comments of the Ottawa police officers were fair as he did not believe there was a conflict at the stage of advising Constable Sebalj about the investigative steps she was taking. Whether or not there was an actual conflict, he should have realized that any involvement on his part in the investigation, and his opinion letter recommending no further action be taken, were not advisable.

It is my opinion that Crown Attorney Murray MacDonald did not exercise good judgment in this case. He became too involved in providing investigative advice without having knowledge of all pertinent information. He then wrote an opinion letter that was extremely insensitive to the alleged victim, Mr. Silmsers, and was written without full knowledge of the facts. Although I do not wish to discourage open and frequent communication between police and the Crown, Crown counsel must ensure that they act within their sphere of responsibility and, most importantly, that they have all relevant facts and information before providing any opinions to investigating officers. I discuss the issue of Crown opinions in further detail in other sections of this chapter.

That being said, I wish to make some comments about Murray MacDonald. For years, Mr. MacDonald has been painted in an extremely negative light. Due to the fact that his father is a convicted child sex abuser, people have assumed that Mr. MacDonald would be sympathetic to people accused of child sexual abuse or even that he himself might be a child sex abuser. Contrary to these views, however, I find that Mr. MacDonald acted properly and professionally with respect to the incident involving his father, which is discussed in Chapter 7, on the institutional response of the OPP, and that the inferences drawn about him as a result of that incident are entirely improper.

1994 Investigations by the Ontario Provincial Police

As discussed in Chapter 7, “Institutional Response of the Ontario Provincial Police,” the OPP conducted four separate but related investigations in the Cornwall area in 1994. One was the re-investigation of David Silmsers’ allegations of sexual assault against Father Charles MacDonald. The second looked at allegations that the Cornwall Police Service, the Diocese of Alexandria-Cornwall, and the local Crown Attorney had conspired to obstruct justice by arranging for a cash payment to Mr. Silmsers that would terminate the criminal investigation. The third investigation concerned allegations that the settlement with Mr. Silmsers constituted an attempt to obstruct justice; the resulting prosecution is discussed in the following section. The fourth investigation involved allegations made by the family of deceased probation officer Ken Seguin that Mr. Silmsers had attempted to extort money from Mr. Seguin.

The Director of Crown Operations in the Eastern Region, Peter Griffiths, was involved in a liaison capacity in those investigations. A news release issued by the Cornwall Police Service on February 2, 1994, stated "Cornwall Police Service personnel and any other investigative agency assisting our police service in such investigations, will liaise with Mr. Peter Griffiths, East Regional Director of Crown Attorneys." Mr. Griffiths recalls that his involvement was with the OPP and he did not deal with the Cornwall Police Service or any other investigative agency. In particular, he dealt primarily with Detective Inspector Fred Hamelink, who led the extortion investigation, and with Detective Inspector Tim Smith, who was in charge of the investigations into Father MacDonald and the conspiracy to obstruct justice. Since the local Crown could not be involved, Mr. Griffiths was to provide any assistance the OPP needed from a Crown during the investigations.

Extortion Investigation

Mr. Griffiths understood that the extortion investigation was conducted concurrently with the investigation into allegations made by David Silmsner against Father MacDonald. In Mr. Griffiths' experience, it was unusual to have an individual be an alleged victim in one investigation and an alleged suspect in another. Although the situation was unusual, he thought it was appropriate for the same police department to conduct both investigations. He agreed that Mr. Silmsner was in an awkward position, but "so were the police officers ... it's very difficult for everybody to keep the separate roles and understand the separate roles."

The concurrent investigations involving Mr. Silmsner gave rise to two issues. The first issue was how to conduct the interview of Mr. Silmsner given that he was both an alleged victim and an alleged suspect. The second was how to coordinate the preparation and presentation of the briefs to the Crown for an opinion about whether charges should be laid in one or both of the investigations. The OPP perception and actions with respect to these two issues was explored in Chapter 7.

On February 10, 1994, Mr. Griffiths had a telephone conversation with Detective Inspector Smith. Although Detective Inspector Smith was not in charge of the extortion investigation, his notes indicate there was some discussion about that investigation:

Discuss method of interview with Silmsner [and] whether he should be cautioned re possible extortion. Don't know if what he's alleged to do with Seguin is extortion per Criminal Code.

Peter Griffiths to research and advise. He will know next Tues or Wed.
I will call.

According to Detective Inspector Smith, he was asking Mr. Griffiths for advice about the extortion investigation at Detective Inspector Hamelink's request. Mr. Griffiths believes he was being asked to research and advise whether or not what was alleged to have happened amounted to extortion under the *Criminal Code*. He was not asked about the interview or cautioning of Mr. Silmsen. Detective Inspector Smith testified that he could not remember whether he received any feedback from Mr. Griffiths. In his evidence Mr. Griffiths pointed out that Detective Inspector Smith's notes say, "I will call"; he does not think that the officer contacted him.

On February 21, 1994, a meeting was held at Mr. Griffiths' office. Present were Detective Inspectors Smith and Hamelink, Detective Constables Michael Fagan and Chris McDonell, Constable Don Genier, and law student Claudette Breault. Mr. Griffiths had no recollection of the meeting beyond what is contained in Detective Inspector Smith's notes: "Interview Silmsen—all sexual allegations [and] how did settlement come about."

Detective Inspector Smith recalled that the extortion issue was discussed during this meeting, but he did not recall whether the issue of cautioning Mr. Silmsen was discussed. As discussed in Chapter 7, when Mr. Silmsen was interviewed the next day, Detective Inspector Hamelink was present behind a one-way mirror. Mr. Silmsen was not cautioned and was not advised of Detective Inspector Hamelink's presence. During the interview, Detective Inspector Smith asked Mr. Silmsen a number of questions on behalf of Detective Inspector Hamelink. Had Mr. Silmsen said anything that could incriminate him, Detective Inspector Smith testified that he would have stopped and cautioned him.

Regarding coordination of the Crown briefs, Detective Inspectors Smith and Hamelink agreed that after completing their investigations, they would compare notes and then present their briefs to Mr. Griffiths for his opinion at the same time. Both Detective Inspectors Smith and Hamelink recall that this arrangement was discussed during the February 21 meeting at Mr. Griffiths' office. Although Mr. Griffiths does not recall the arrangement nor it being discussed with him, he does not dispute it. However, Mr. Griffiths never looked at both briefs together. He was not aware that Detective Inspector Smith and Detective Inspector Hamelink did not have an opportunity to review each other's briefs before providing them to him.

On September 29, 1994, Detective Inspector Hamelink and Detective Constable McDonell attended at Mr. Griffiths' office and provided him with an oral summary of the extortion investigation and the brief. Since Mr. Griffiths had not yet received

a brief from Detective Inspector Smith on the Father MacDonald investigation, he called him on October 11 and requested that he finish the investigation soon, as he felt it was dragging. The next day Mr. Griffiths wrote his opinion letter on the extortion investigation to Detective Inspector Hamelink. Mr. Griffiths testified that the call to Detective Inspector Smith was probably prompted by the fact that he had received Detective Inspector Hamelink's brief, but he did not know whether he advised Detective Inspector Smith of this fact. According to Detective Inspector Smith, Mr. Griffiths never told him that Detective Inspector Hamelink's investigation was complete.

As discussed in Chapter 7, Detective Inspector Smith was "bitterly disappointed" when he learned that Detective Inspector Hamelink's brief had already been submitted to Mr. Griffiths and that the arrangement to compare briefs and submit them together had been breached. One of the reasons for the arrangement was to have the briefs reviewed by each investigator to see if any information related to both investigations. Some of the information in the extortion brief may have proven useful in the investigation of allegations against Father MacDonald. For example, Jos van Diepen had provided information obtained from a probationer of Nelson Barque who had resided with Father MacDonald at St. Raphael. The probationer told Mr. van Diepen that he no longer wanted to live there and "said that Father Charlie was a queer, he liked little boys but never specified."

Detective Inspector Smith expedited the delivery of his briefs so that Mr. Griffiths could review them with Detective Inspector Hamelink's brief. He did not recall whether he asked Mr. Griffiths to review the briefs together. Mr. Griffiths did not review the briefs with a view to determining if there were any inconsistencies between the investigations.

Mr. Griffiths' opinion on the extortion investigation was that there was insufficient evidence to establish reasonable and probable grounds that Mr. Silmser had committed the crime of extortion. This was the conclusion of Detective Inspector Hamelink and Detective Constable McDonell, and Mr. Griffiths agreed with it.

In his opinion letter, dated October 12, 1994, Mr. Griffiths notes that he only has one piece of evidence of an extortion threat:

The only witness statement that I can find that provides any evidence of an extortion threat comes from Malcolm MacDonald. Mr. MacDonald related inadmissible hearsay evidence from Ken Seguin and relates the following about a conversation he had with Mr. Silmser, "from what I can remember from the conversation, he was demanding money or he would go to the police, concerning Ken's behaviour" ...

Mr. Griffiths concluded that this “is a very thin statement on which to rest a criminal charge.” He also considered Malcolm MacDonald’s experience as a Crown attorney and criminal defence counsel and was of the opinion that if Mr. MacDonald believed Mr. Silmser was committing criminal extortion against his client, he would warn Mr. Silmser off or go the police: “[H]e did neither.”

Mr. Silmser reported allegations against Ken Seguin to the Cornwall Police Service in January 1993, and a threat to institute civil proceedings did not come within the Criminal Code definition of extortion. Mr. Griffiths also found that none of the other statements contained in the brief provided evidence of extortion. Mr. Griffiths concluded that there was insufficient evidence to find that there were reasonable and probable grounds to support a criminal charge of extortion against Mr. Silmser.

Investigations of Father Charles MacDonald, Conspiracy, and Obstruction of Justice

On February 8, 1994, Detective Inspector Smith called Mr. Griffiths to advise him that he was starting his investigations and that he would like to obtain a copy of the settlement between Mr. Silmser and the Diocese of Alexandria-Cornwall. Mr. Griffiths contacted Peter Annis, the lawyer for the Diocese, and arranged for Mr. Annis to provide Detective Inspector Smith with a copy of the settlement document. Mr. Griffiths could not recall whether he had any discussion with Detective Inspector Smith about the contents of the settlement document.

Mr. Griffiths had conversations with Detective Inspector Smith periodically about the progress of the investigations. In his evidence, Mr. Griffiths was clear that he was not directing the investigation in any way and that Detective Inspector Smith was not asking him for any guidance on how to conduct the investigation. Although he had not yet received a brief from Detective Inspector Smith and the investigation was clearly still ongoing, in June 1994 Mr. Griffiths did not have any concern about the length of time the investigation was taking.

On August 11, Mr. Griffiths received another call from Detective Inspector Smith updating him on the investigation. Detective Inspector Smith’s note of this call suggests that he was questioning whether he had reasonable and probable grounds with respect to Mr. Silmser’s allegations against Father MacDonald: “1. Silmser complaint invest almost complete. R & PG—???”

As mentioned above, Mr. Griffiths contacted Detective Inspector Smith on October 11 and requested that the investigation be completed soon. Although there is no specific timeline for investigations, Mr. Griffiths felt it was “time to move this along.” He received the briefs from Detective Inspector Smith in early November 1994 and took several weeks to review them.

On December 20, Mr. Griffiths called Detective Inspector Smith and provided his verbal opinion about the investigations. This was their first discussion after Detective Inspector Smith sent the briefs. According to the officer's notes, Mr. Griffiths advised him that with respect to Father MacDonald there was objectively enough credible evidence but subjectively there was not honest belief. Mr. Griffiths also made a comment about the credibility of Mr. Silmsen being a problem. Mr. Griffiths followed his verbal opinions with written opinions the following day. As will be discussed, the written opinion on the Father MacDonald investigation differs from the notes Detective Inspector Smith took of their initial conversations, which once again illustrates why it is a good practice for a Crown counsel to confirm their legal opinions in writing. I interpret those notes as indicating that Mr. Griffiths did not subjectively believe Mr. Silmsen.

***Peter Griffiths' Opinion Letter on the Father Charles MacDonald
Re-Investigation***

At the outset of his letter, dated December 21, 1994, Mr. Griffiths noted that he had received a two-volume brief of the police investigation into allegations of indecent assault made by Mr. Silmsen. Although the letter refers specifically to a charge of indecent assault, Mr. Griffiths considered whether any criminal charges were possible on the facts presented to him. He outlined the four incidents of abuse that Mr. Silmsen complained of to the police and determined whether there were grounds to support the laying of a criminal charge.

The first alleged incident occurred when Father MacDonald touched Mr. Silmsen's thigh following a mass when Mr. Silmsen served as altar boy. Mr. Griffiths concluded that there was "no indecent context that would give rise to reasonable and probable grounds to support a charge of indecent assault."

The second incident was alleged to have occurred at a retreat in or around June 1972, when, Mr. Silmsen alleged, Father MacDonald came naked to his bed and grabbed his genitals. According to the facts laid out in Mr. Griffiths' letter, Mr. Silmsen also maintained that Father MacDonald was walking through the boys' dormitory naked telling dirty jokes. Mr. Griffiths noted that the police interviewed many people who attended that retreat and they all denied any suggestion of Father MacDonald walking around the dormitory naked:

This is an event so astonishing that had it occurred, it doubtless would have been recalled by other young people attending the retreat. Not only do they not recall it happening, they have a positive recollection that it did not happen. In the face of that evidence, it cannot be said that the objective standard of reasonable and probable grounds has been met with respect to that allegation.

The evidence, however, is that other people told Mr. Silmser that Father MacDonald was walking around naked. Unfortunately, Mr. Griffiths wrongly attributed that allegation to Mr. Silmser.

The third incident was alleged to have occurred in the church office at St. Columban's Parish in 1972 and involved Father MacDonald grabbing Mr. Silmser's genitals. The fourth allegation was that Father MacDonald took Mr. Silmser for a ride in the country and committed an act of non-consensual buggery. Mr. Griffiths noted that Mr. Silmser's recollection of these events was extremely vague and although "it is not uncommon for individuals who have survived very stressful events to block out part or all of the memory of those events ... the absence of those specific memories makes it all but impossible to commence prosecutions." Mr. Griffiths testified that having an understanding as to why someone cannot provide a detailed complaint does not excuse the necessity of proving it in court. This was a stumbling block for Mr. Griffiths in this case.

Everybody Mr. Griffiths spoke to about Mr. Silmser's allegations against Father MacDonald believed something inappropriate had happened between Mr. Silmser and people in authority. The question was whether his allegations were specific enough to support a criminal charge. In his letter, Mr. Griffiths concluded that reasonable and probable grounds did not exist to lay charges in respect of any of the four alleged incidents:

It is my advice, based on the material provided in the police investigation brief that the vagueness of the allegations, the difficulty in placing them within a reliable time frame, and the lack of corroboration all combine to prevent the evidence from reaching the threshold of objective reasonable and probable grounds. In addition as I understand from your material, you are not personally, or subjectively, satisfied that you have reasonable and probable grounds to lay criminal charges. Since a subjective belief is an essential element in the swearing of an information, it is my advice that absent that belief charges cannot be laid by you.

It is clear from this letter that Mr. Griffiths' opinion was that the police had neither objective grounds nor subjective belief. This is inconsistent with the notes of the telephone conversation between Mr. Griffiths and Detective Inspector Smith on December 20, from which it appears Mr. Griffiths told Detective Inspector Smith there was enough objective evidence. When asked about the discrepancy, Detective Inspector Smith said he did not know why that change occurred. He did not think he had a discussion with Mr. Griffiths between the time of the telephone call and receipt of the letter.

Mr. Griffiths also was unable to explain the apparent change except to point out that on August 11, 1994, Detective Inspector Smith was questioning whether he had reasonable and probable grounds to lay a charge. As discussed in Chapter 7, Detective Inspector Smith thought this was a very close case in terms of reasonable and probable grounds. Mr. Griffiths also believed that this was a close case on every aspect of the reasonable and probable grounds test.

Mr. Griffiths agreed that he was giving an opinion on the objective element of reasonable and probable grounds and not the subjective part, which is within the police officer's domain. At the end of his letter, Mr. Griffiths states that this is his opinion and is not binding upon Detective Inspector Smith:

The Ontario Provincial Police operate independently of the Crown Attorney's office and are legally entitled to lay charges if they see fit without the approval of the Crown Attorney.

According to Mr. Griffiths, this reflects the practice in Ontario, where the final decision on reasonable and probable grounds rests with the police, and I agree with that practice.

Peter Griffiths' Opinion Letter on the Conspiracy Investigation

On December 21, 1994, Mr. Griffiths also provided a written opinion to Detective Inspector Smith with respect to the "investigation into allegations of collusion between the Cornwall Police Service, the Crown Attorney and the Diocese of Alexandria-Cornwall to not charge and prosecute Father Charles MacDonald for improper reasons." Mr. Griffiths concluded that the evidence did not reveal criminal activity. As he explained, conspiracy is an unlawful agreement between parties, and he found there was no direct or indirect evidence of any agreement between those parties.

As I discuss in Chapter 7, this investigation suffered from several deficiencies. Mr. Griffiths could have requested that investigators follow up on some of these deficiencies, including the interview of Father MacDonald, the interview of Malcolm MacDonald, and the apparent lack of investigation into the involvement of the lawyers Jacques Leduc and Sean Adams.

Clarifying the Roles of the Police and the Crown

In all of these investigations, Mr. Griffiths' opinions were based on the information provided by the investigating officers. Neither Detective Inspector Smith nor Detective Inspector Hamelink received any direction or request from Mr. Griffiths for further follow-up or clarification. Mr. Griffiths acknowledged that if,

for example, an alleged victim's statement contained in the brief is unclear, it would be open to him to request the police to follow up or investigate, but he "preferred not to" because he distinguished his role as a Crown from the police role as investigators.

According to Mr. Griffiths, his opinion letter sets out what he thinks are weaknesses in the case, and if the police think they can remedy those weaknesses they can conduct further investigation. He did not see it as part of his role to scrutinize the sufficiency of the police investigation. Detective Inspector Smith, however, said that when the police send a brief to a Crown, the Crown will often, within his or her recommendations, request further investigation and the police will follow those instructions. He felt that if a Crown was not satisfied with portions of a brief it should be brought to the attention of the police.

It appears that in this instance, the police and Crown may not have been clear with respect to their respective roles. The Crown and the police have distinct roles, and the line between them should be respected. However, to ensure the efficiency and effectiveness of investigations, it is crucial that the Crown and police have a common understanding of what role each plays. Practice Memorandum PM [2005] No. 34, dated March 31, 2006, provides Crowns with direction on their relationship with the police: "Generally, the role of a Crown counsel at the pre-charge stage is advisory in nature and not directive." The memorandum essentially provides that Crowns should advise police only on legal issues before charges are laid.

R. v. Malcolm MacDonald: Attempt to Obstruct Justice

Peter Griffiths Receives Brief on Attempt to Obstruct Justice Investigation

The fourth matter mentioned in the previous section was the investigation into the alleged obstruction of justice by lawyers who brought about the civil settlement between David Silmsen and the Diocese of Alexandria-Cornwall, which terminated the Cornwall Police Service investigation of David Silmsen's sexual assault allegations. The settlement document provided that in return for \$32,000, Mr. Silmsen would not proceed with a criminal or civil action against Father Charles MacDonald. As early as January 1994, Peter Griffiths was concerned about a potential obstruction of justice. He was quoted on this matter in the *Ottawa Citizen* on January 25, 1994: "It's certainly a question I would ask the (Ottawa) officers to consider in their investigation: whether there was an obstruction of justice."

Mr. Griffiths received a brief from Detective Inspector Tim Smith on the attempt to obstruct justice investigation on or about November 7, 1994. Included in the brief was a synopsis prepared by the Ontario Provincial Police (OPP), which said of the civil settlement:

This document was prepared, and reviewed by three practicing lawyers for the Province of Ontario.

It is difficult to understand how three knowledgeable, and experienced solicitors, could condone, and approve such a document, not realizing Section two of the contract clearly obstructs justice.

This synopsis reflects the fact that at the time, Detective Inspector Smith was concerned about all three of the lawyers' actions with respect to the settlement. Although nothing in the synopsis singles out Malcolm MacDonald, counsel for Father Charles MacDonald, he was the only one ultimately charged. No additional information arose between the receipt of the brief by Mr. Griffiths in November 1994 and February 1995, when Mr. MacDonald was charged by the OPP. All of the information and documents Mr. Griffiths had to base his opinion on came from the OPP.

After reviewing the brief, Mr. Griffiths contacted Detective Inspector Smith on December 20, 1994, and provided him with a verbal opinion. He told Smith that it was appropriate to contact the Law Society of Upper Canada about the three lawyers involved, Mr. MacDonald, Jacques Leduc, and Sean Adams: the obstruct justice did not constitute an offence but was unprofessional. Two days later, Mr. Griffiths contacted Detective Inspector Smith and advised him, as noted by the officer, "problem with Malcolm MacDonald, possible obstruct. Further consultations to be done."

Peter Griffiths Obtains a Second Opinion

With respect to the obstructing justice allegations, the issue was not whether the release signed by David Silmsner, in which he agreed not to pursue a civil or criminal complaint in exchange for a monetary settlement, was a lawful document, but whether a criminal offence had been committed in the creation of the document. There was no doubt in Mr. Griffiths' mind that the clause in the release prohibiting Mr. Silmsner from bringing a criminal complaint was illegal; the question was whether the individuals involved in drafting the document had committed a crime. Mr. Griffiths wanted another opinion, so he asked Don McDougall, a senior Crown attorney, to review the brief. On January 6, 1995, Mr. Griffiths advised Detective Inspector Smith that Mr. McDougall would be reviewing the brief and would have recommendations by the end of the month.

On January 30, Mr. Griffiths advised Detective Inspector Smith that Mr. McDougall thought there were reasonable and probable grounds to believe Mr. MacDonald had attempted to obstruct justice. There was also a reasonable prospect of conviction, and it was in the public interest to prosecute. During this

telephone call, Detective Inspector Smith advised Mr. Griffiths of a release that was sent by Mr. Leduc to Mr. MacDonald, which contained no mention of criminal matters. Detective Inspector Smith was referring to a one-paragraph French precedent that Mr. Leduc had given Detective Constable Michael Fagan.

It was only after receiving the opinion from Mr. McDougall that Mr. Griffiths was comfortable providing an opinion to Detective Inspector Smith that Mr. MacDonald should be charged. Mr. Griffiths did not believe there were reasonable and probable grounds to charge the other two lawyers with attempt to obstruct justice. The entire brief was forwarded to Mr. McDougall for his opinion, and he recommended charges only against Malcolm MacDonald.

As I have found in Chapter 7, on the institutional response of the OPP, the investigation of the attempt to obstruct justice allegation was deficient. Based on the information that was available for review at the time, it was unlikely the Crown would conclude that charges should be laid against Mr. Adams or Mr. Leduc.

No Written Opinion Provided

Unlike the opinions provided in the Father MacDonald, the extortion, and the conspiracy investigations, Mr. Griffiths did not prepare a written opinion on the obstruction of justice investigation. During his testimony, he agreed the better practice is to provide written opinions. In my view, a written opinion should have been provided in this case.

The current practice memorandum, dated March 31, 2006, on “Police: Relationship With Crown Counsel” examines aspects of the working relationship between Crown counsel and police officers. It provides that Crown counsel who provide advice about laying criminal charges should, where feasible, do so in writing.

Brockville Office Assigned

Once Malcolm MacDonald was charged, Mr. Griffiths assigned the file to the Brockville Crown Attorney’s Office. The Cornwall Crown Attorney’s Office could not conduct the prosecution because Malcolm MacDonald was a lawyer from the Cornwall area. In addition, since Cornwall Crown Attorney Murray MacDonald had had some conversations with Malcolm MacDonald regarding the circumstances leading to the charge of obstructing justice, it would have been inappropriate for his office to act. Brockville Crown Attorney Curt Flanagan, who had sole carriage of the prosecution, had no previous dealings with Malcolm MacDonald and did not know him personally or professionally.

Although the Cornwall Crown Attorney’s Office was not handling the prosecution, Mr. Flanagan wrote to Murray MacDonald and asked that either Guy

Simard or Lynn Robinson, both assistant Crown attorneys in the Cornwall office, act as agent for the first court appearance. Mr. Flanagan did not see a problem with having a Cornwall Crown act as an agent, as he or she was instructed simply to adjourn the matter. Even though the Cornwall office was in a conflict, it was acceptable to use the office for routine matters such as the coordination of disclosure and the arrangement of adjournments. However, someone from the office should have been designated to handle these issues, and all correspondence should have been addressed to that individual rather than to Murray MacDonald.

In preparation for the prosecution, Mr. Flanagan had access to the brief prepared by Detective Inspector Smith, which he used when providing disclosure to the defence. He also provided materials to Justice Lennox before the pre-trial, which was standard practice at the time.

Role of Jacques Leduc and Sean Adams

As noted above, the synopsis that was contained in the Crown brief refers to the fact that the settlement document was prepared and reviewed by three practising lawyers. Mr. Flanagan did not recall any discussion with Detective Inspector Smith about the culpability or responsibility of the other lawyers. He did not think that Mr. Adams and Mr. Leduc were as responsible as Mr. MacDonald, and he understood from the synopsis that Detective Inspector Smith was of the opinion that Mr. Adams and Mr. Leduc were not criminally responsible for the contents of the release: “[A]lthough he believes that it may have been some negligence on their part, he didn’t believe that they were committing or party to the criminal offence.”

Mr. Flanagan’s understanding was that Mr. Leduc prepared a draft of a release that did not mention criminal proceedings. The draft was then sent to Mr. MacDonald, who prepared the release and sent it back to Mr. Leduc in a sealed envelope, which Mr. Leduc did not open. In terms of Mr. Adams’ role, Mr. Flanagan gleaned from Mr. Adams’ statement to the OPP that he had not noticed the insertion of the word “criminal” into the release. Mr. Flanagan was never asked for a legal opinion about whether Mr. Leduc, Mr. Adams, or Bishop Eugène LaRocque should be charged in connection with the settlement document. When the matter came to Mr. Flanagan’s office, the charge against Mr. MacDonald was already laid. He was never asked for an opinion about that charge either.

Mr. Flanagan reviewed the brief and assessed how the statements by Mr. Adams and Mr. Leduc could assist him in determining Mr. MacDonald’s culpability, but he did not take it upon himself to reassess all the circumstances surrounding the Silmser settlement.

Pre-Trial, Guilty Plea, and Sentencing

A pre-trial conference was held before Justice Brian Lennox during which the guilty plea that was eventually entered crystallized. On September 12, 1995, Malcolm MacDonald pleaded guilty to the offence of unlawfully attempting to obstruct justice for arranging a monetary payment to Mr. Silmsen in order to dissuade him from participating in the Father MacDonald investigation.

The defence submitted that an absolute discharge was an appropriate sentence. Mr. Flanagan did not object to the defence position on sentencing, and he cited four reasons for taking this position. First, the plea of guilt avoided what would have been a somewhat lengthy trial.

Second, the police decided independently, separate from the issue of the release, not to lay criminal charges in relation to the allegations against Father Charles MacDonald. Mr. Flanagan believed it would have been an aggravating factor had the police laid a charge. He believed that charges were not laid because there was no reasonable prospect of conviction. As of September 12, 1995, Mr. Flanagan did not know that John MacDonald had come forward with allegations against Father MacDonald in August 1995. He had not been given any indication that charges were contemplated or that an investigation was ongoing into Father MacDonald.

The third submission by the Crown in support of an absolute discharge was Mr. MacDonald's exemplary background. The fourth was the fact that the matter would be reported to the Law Society of Upper Canada. Although the Crown was not opposed to an absolute discharge, Mr. Flanagan stated to the Court that "obviously it was a gross error, at the very least, in judgement of Mr. MacDonald. And on the other hand, one could say that, to put in the vernacular, 'he should know better.'"

According to Mr. Flanagan, reporting to the Law Society of Upper Canada was a factor he took into consideration when providing the Court his submissions on sentencing, because he believed the complaint would have some repercussions for Mr. MacDonald. He was not aware, however, whether any action was taken in this regard. In hindsight, as a condition of its agreement with the defence position on sentencing, the Crown should have required that the defence prove to the Court that the complaint had been or would be filed with the Law Society.

Appropriateness of Sentence and Public Opinion

Malcolm MacDonald's sentence of an absolute discharge attracted media attention in Cornwall, with headlines such as, "Priest's lawyer fall guy in sex abuse case: Counsel," and "Priest's lawyer pleads guilty but gets off scot-free." Mr. Flanagan was aware that this case was well known in Cornwall, but he did

not know the full extent of the circumstances. He was not aware at the time that there were protests after the sentencing of Mr. MacDonald.

Regional Crown Griffiths was aware that Mr. MacDonald pleaded guilty and received an absolute discharge. He was comfortable that he had put the case in the hands of a senior and experienced Crown attorney to prosecute and this was the result. Mr. Griffiths was not aware of the concern expressed in the local media about the outcome of the case nor that there were protests in Cornwall about the sentence.

John MacDonald Expresses Concerns to MPP John Cleary About Sentence

On October 20, 1995, John MacDonald, one of the complainants in the Father Charles MacDonald matter, had a meeting with MPP John Cleary about the outcome of the Malcolm MacDonald case. John MacDonald told him he did not think the sentence was right. During this meeting, Mr. Cleary asked John MacDonald to put his thoughts on paper so he could forward the letter to the Attorney General's Office. John MacDonald subsequently wrote a letter addressed to the Attorney General, dated October 24, 1995. In writing this letter, Mr. MacDonald was seeking clarification from the Attorney General's Office of "how a man can plead guilty to something and walk away with an absolute discharge." Mr. Cleary forwarded Mr. MacDonald's letter to Attorney General Charles Harnick on or around November 1.

Mr. Griffiths was asked by someone at the Attorney General's Office to respond to Mr. MacDonald's letter. Addressing correspondence on behalf of the Attorney General was a normal part of Mr. Griffiths' job. On or about December 1, Mr. Griffiths wrote a letter to John MacDonald telling him that the sentence received by Malcolm MacDonald was equal to similar cases decided in courts in other provinces. Mr. Griffiths did some research or had some research done on this issue, and during his testimony he recalled in particular a case in Saskatchewan that involved a lawyer.

John MacDonald still had concerns and followed up with another letter requesting further details. In this letter, dated January 8, 1996, he requested that Mr. Griffiths provide him with "either a copy of each of the other decisions, or refer to all the rulings used to decide this case." He also requested the transcripts from Malcolm MacDonald's case. Mr. Griffiths did not respond to this letter and did not ask anyone to respond on his behalf. John MacDonald was not a party to any of the offences, and Mr. Griffiths felt that his response to the initial inquiry was sufficient. As well, in early January 1996, Mr. Griffiths was seconded to be Acting Assistant Deputy Attorney General. He was working in Toronto and "had a lot of other things on [his] mind at the time." Mr. Griffiths testified that he should

have at least acknowledged receipt of the letter and explained that he could not provide the material requested or advised Mr. MacDonald how he could go about getting it: “It was not appropriate not to answer the second letter.”

On or around February 1, 1996, John MacDonald wrote Mr. Cleary that he had yet to receive a response from Mr. Griffiths to his January 8 letter. Mr. MacDonald met with Mr. Cleary on February 19 and discussed some of the concerns he had, one of which was the lack of response from Mr. Griffiths. Mr. Cleary wrote two further letters to Attorney General Harnick requesting that either he or Mr. Griffiths respond to Mr. MacDonald’s January 8 letter.

In my view, Mr. Griffiths should have responded to John MacDonald’s second letter.

R. v. Nelson Barque and Subsequent Complaint

Don Johnson Is Defence Counsel

In 1995, Nelson Barque was prosecuted by the Cornwall Crown Attorney’s Office for sexual offences committed against a former probationer, Albert Roy. The allegations by Mr. Roy and the investigation and arrest of Mr. Barque have been discussed in earlier chapters of this report. Don Johnson had left the Crown’s office about three years previously and was working as a criminal defence attorney in Cornwall. He was retained to represent Mr. Barque in these proceedings. In a letter dated January 16, 1995, Murray MacDonald, who at the time was the Crown attorney in Cornwall, raised the issue of an appearance of conflict with Mr. Johnson:

As I indicated in conversation with you there may be an appearance of conflict with you as counsel in light of the fact that you were consulted by probation authorities in respect to charges against the above noted individual during your tenure as Crown Attorney. You have indicated to me that a plea is anticipated in which case you feel a potential conflict is not an issue.

There were no formal policies or protocols regarding potential conflicts of interest for these situations. However, Mr. MacDonald recognized there could be a potential conflict of interest, which is why he alerted Mr. Johnson to that issue.

Mr. Johnson did not believe there would be a conflict if the matter were resolved by way of a guilty plea. If the matter went to trial, Mr. Johnson acknowledged there would have been a conflict and he would have stepped down. According to Mr. Johnson, if there was in fact a conflict or a concern for the administration of justice, the Crown could have made a formal complaint before a judge to have him removed as counsel, which they had done in the past.

Guy Simard, an assistant Crown attorney in the Cornwall office, was assigned the prosecution. On February 14, 1995, he wrote a letter to Mr. Johnson again raising the issue of a potential conflict if the matter went to trial. Mr. Johnson responded, in a letter dated February 27, "I do agree, if this matter does go to trial that I would have a conflict of interest and I would turn Mr. Barque over to another counsel."

Crown Attorney MacDonald agreed with Mr. Johnson's position that there was no conflict as long as Mr. Barque pleaded guilty. If there was a guilty plea, Mr. Johnson would not be using confidential information gained from one client to use adversely in the course of his acting on behalf of a second client.

Both Crown attorneys involved in this matter raised the issue of Mr. Johnson's potential conflict of interest and it had been documented. In my view, the matter was properly dealt with, and there is no reason why the Crown's office should have insisted on Mr. Johnson's removal from the file unless the matter was to proceed to trial.

The Ministry of the Attorney General set up a specialized prosecution team to help deal with issue of conflicts. The Director of Criminal Prosecutions Branch was set up in 1989. In 1994 this office became a part of the Crown Law Office—Criminal and was renamed Special Investigations. The name was changed in May 2002 to Justice Prosecutions. The office is responsible for prosecutions of justice-related officials, including police officers. It is unclear to me if this office would become involved with the prosecution of a former probation officer. I am not aware of a practice memorandum on conflict of interest in the current Crown Policy Manual, but it would be useful to define conflicts and provide Crown counsel with some direction on how to deal with them when they arise.

On July 10, 1995, Mr. Barque pleaded guilty to indecent assault and the matter was put over for sentencing on August 18. He was sentenced to four months incarceration and eighteen months probation. One of the conditions of his probation was that he not be in the presence of any young person under the age of eighteen unless in the company of another responsible adult.

***Constable Heidi Sebalj Provides "Report" to Murray MacDonald:
C-44 Ready to Proceed Against Nelson Barque***

On or about February 7, 1996, Crown Attorney MacDonald received a letter from Constable Heidi Sebalj from the Cornwall Police Service in which she provided a report about allegations of sexual assault involving Nelson Barque. Before writing this letter, Constable Sebalj had a meeting with Mr. MacDonald in his office. After what had transpired in 1993, the Cornwall Crown's office had adopted a practice of requiring officers to make requests in writing.

The letter explained that the alleged victim, C-44, had not wished to be involved in the prosecution of Mr. Barque in 1995 but now wanted to formally proceed in respect to allegations of sexual abuse by Mr. Barque. As discussed above and in earlier chapters, C-44 was one of the probationers involved in the 1982 investigation of Mr. Barque. Constable Sebalj provided some details about the 1982 investigation, including the fact that Mr. Barque admitted to having sexual relations with C-44 while he was a probationer. Constable Sebalj enclosed the 1982 report as well as a statement provided by C-44 on December 21, 1995. She was seeking advice as to whether charges could be laid against Mr. Barque in respect of C-44's allegations.

Murray MacDonald Forwards Material to Peter Griffiths for Opinion

Crown MacDonald forwarded Constable Sebalj's letter and the attached material to Peter Griffiths. According to Mr. MacDonald, it was understood between himself and Constable Sebalj that she was sending him the material "for the purpose of relaying it to an outside Crown." At the time, Mr. Griffiths was Acting Assistant Deputy Attorney General. He felt Mr. MacDonald may have been asking for his opinion because of his familiarity with "the other outlying issues."

Mr. MacDonald was acting as a conduit between Constable Sebalj and Mr. Griffiths, and he did not have any discussions with Mr. Griffiths about the matter other than the receipt of his opinion, which Mr. MacDonald then relayed to Constable Sebalj. For example, Mr. MacDonald did not advise Mr. Griffiths that Mr. Barque had pleaded guilty to a similar offence in 1995. He thought Mr. Griffiths would have known this, but Mr. Griffiths was not aware that Mr. Barque had been convicted of the charge involving Albert Roy in 1995.

The letter from Constable Sebalj that was forwarded to Mr. Griffiths referred to the fact that Mr. Barque had been charged the previous year for sexual offences. Mr. Griffiths did not ask anyone if Mr. Barque had been convicted: "I didn't ask anybody for anything. I was given material and said, 'Based on this material, what's your opinion?'" Mr. Griffiths testified that since each case turns on its own facts, he could not say whether knowledge of Mr. Barque's previous conviction would have had an impact on his ultimate opinion.

Peter Griffiths Provides Opinion: No Charges

After reviewing the material received from Mr. MacDonald, Mr. Griffiths concluded that criminal charges should not be laid in this case. On February 27, 1996, Mr. MacDonald met with Constable Sebalj and advised her of this opinion. Mr. MacDonald provided her with a written opinion in a letter dated March 5:

I forwarded your materials to the Regional Director of Crown Attorneys for opinion. I have recently received same. In a word, Mr. Griffiths has determined the charge of indecent assault lacks these essential elements:

- no assaultive behaviour
- no coercion or threats used to compel the consent of [C-44] to the sexual acts
- well beyond the age of consent

With this lack of essential elements to support the charge of indecent assault, criminal proceedings are not available herein.

Mr. Griffiths testified that in giving his opinion, he considered whether Mr. Barque's position as probation officer and C-44's position as probationer might have vitiated consent. Mr. Griffiths acknowledged that this was possible based on the law at the time, but that it was the application to the facts of this case where that fell apart. He also acknowledged that given the relationship between C-44 and Mr. Barque, actual threats would not be necessary to show coercion "because of the power imbalance."

Based on the information he was provided, Mr. Griffiths knew that Mr. Barque was C-44's probation officer, that Mr. Barque gave C-44 money for alcohol and drugs, and that C-44 had a history of troubles with alcohol. However, Mr. Griffiths considered it relevant that the money and alcohol given to C-44 at Mr. Barque's residence preceded the sexual contact. When asked why he considered that relevant, Mr. Griffiths replied:

What the complainant says is that he is afraid of Mr. Barque because of his position. And yet this person who he's afraid of he's also breaching his probation with, he's getting money from. He's going to his residence. He has this person in his pocket.

There are a number of passages in C-44's statement that could be interpreted as evidence of some coercion. For example:

... I was, I was afraid maybe, you know ... if I went and said something to his superiors there, mention it to anybody, you know. Word would get around and I would get breached on probation, I would've went back to jail. I didn't want to go back to jail. That's the last thing, you know. I just finished like six and a half, seven months in jail and ... I never want to go back.

...

... It started happening and then I just kept goin' back cause I was scared. You know, like I didn't know what was goin' on. I didn't understand all this, you know. To me I probably thought it was a normal part of life. We never talked about ah, homosexuals or gays or stuff like that when I grew up, you know. I didn't even know anything about sex til I was seventeen years old ... I was just lost, I didn't know, I was scared. I didn't want to say anything to anybody cause I'da got breached and I would'a went back to jail and then I didn't wanna go back to jail.

Mr. Griffiths agreed that taken in isolation these statements indicate there could be some coercion but “you can't pick and choose. I mean I'm looking at the statement as a whole.” Certain portions of the statement caused Mr. Griffiths to question whether C-44 was afraid of Mr. Barque. As an example, he pointed to the reference in the statement to C-44 stealing Mr. Barque's car: “He steals his car and there is reference to that in the statement of the—the monikered individual steals the probation officer's car and clearly thinks that he's safe from being reported.”

It is true that C-44 admits to stealing Mr. Barque's car as a way to “get back at him somehow.” However, in my view, the statement does not indicate that C-44 felt he would be safe from being reported. In fact, C-44 states that his plan “back fired on me.” He related that he and his friend were stopped by the police while hitchhiking on the 417 after the car had run out of gas, and that an Ontario Provincial Police (OPP) officer questioned him about the incident after he had returned to Cornwall. He said he “play[ed] stupid” about the incident and that his probation was not breached because there was no proof that he stole the car.

It is clear that Mr. Griffiths did not feel there was coercion:

... my view, looking at the statement as a whole, was that coercion was not a factor, notwithstanding what those individual statements say.

... Or if it was a factor it wasn't something that I could prove.

This may have been a reasonable conclusion in 1996. Today, with our better understanding of victims of historical sexual abuse and the grooming process they are subjected to by the perpetrators, I would expect such issues as coercion to be examined and investigated more thoroughly.

It certainly appears that Mr. Griffiths was not in possession of all of the relevant facts before providing an opinion regarding this investigation. He had not been advised of the 1995 conviction of Mr. Barque or made aware that there

were other potential victims, such as Robert Sheets. He had not been provided with other available information, such as OPP Detective Constable William Zebruck's notes on the interview of witnesses in the Albert Roy investigation. The OPP's involvement is further discussed in Chapter 7. Mr. Griffiths also never had the opportunity to meet with Constable Sebalj. In my view, a Crown attorney providing an opinion should wherever possible communicate with the investigating officer. In this case, Mr. Griffiths relied on materials forwarded to him by Mr. MacDonald and did not have any discussions with the investigating officer.

R. v. Father Charles MacDonald: Charges Laid and Preliminary Inquiry

In late 1994, Peter Griffiths provided an opinion to the Ontario Provincial Police (OPP) that reasonable and probable grounds did not exist to lay charges in respect of David Silmser's allegations against Father Charles MacDonald. In the following year, John MacDonald and another individual, C-3, disclosed allegations against Father MacDonald, and the police investigation continued. The Crown attorney was kept apprised of the OPP's ongoing investigation, which is discussed in detail in Chapter 7, on the institutional response of the OPP. On May 19, 1995, Detective Inspector Tim Smith called Mr. Griffiths and advised him of the new allegations against Father MacDonald.

Second Brief Prepared and Robert Pelletier Assigned to Prosecute

On January 3, 1996, Mr. Griffiths received a call from Detective Inspector Smith updating him on the investigation. Detective Inspector Smith said the OPP would have a brief prepared within two weeks and he wanted Mr. Griffiths to review it and provide recommendations. Detective Inspector Smith's notes of the telephone call say that "we feel with additional two victims there are RPG [reasonable and probable grounds] to lay indecent assault charge." Mr. Griffiths told Detective Inspector Smith he would review the brief and "possibly have Bob Pelletier's office prosecute."

Mr. Griffiths testified that given what had happened in the past, there was still a concern about having the local Crown prosecute. As a result, he had to find another prosecutor in the Eastern Region. Mr. Griffiths thought Robert Pelletier was the "perfect" person to take on this matter because he:

... was one of the most experienced Crowns in the province with historical sexual assaults, and particularly involving young boys and

young men and church figures as a result of his work in Alfred. He had worked for many years with Inspector Smith in those prosecutions and had been very successful in those prosecutions.

On January 15, Mr. Griffiths called Mr. Pelletier and asked him to become involved in the Father MacDonald investigation and prosecution. On January 18, Mr. Pelletier attended Mr. Griffiths' office to obtain the brief.

In a note to file, Mr. Pelletier wrote that Mr. Griffiths requested that he "conduct the prosecution if charges were to be laid." Mr. Pelletier testified that when he wrote this memo, he was not sure if Mr. Griffiths had any opinion about whether charges should be laid. It was clear to him, however, from reviewing subsequent memos that determining whether or not charges should be laid was also part of his responsibility. The synopsis prepared by Detective Inspector Smith and Detective Constable Michael Fagan, which formed part of the brief, did not include a recommendation that charges be laid. Detective Inspector Smith testified that he had reasonable and probable grounds and therefore could lay charges, but he had concerns about the reasonable prospect of conviction:

I'm going to see what they say about it—the Crown say about it—and if they feel that there's not reasonable prospect of a conviction, then I'm going to wait and I'm going to find myself another victim somewhere along the line because once I lay a charge, the clock starts ticking, and if there's no reasonable prospect of a conviction those charges are gone.

In the meantime, on January 16, Detective Constable Fagan advised Detective Inspector Smith that he spoke briefly to Mr. Griffiths about the allegations of C-3. Mr. Griffiths said that the indecent assault on C-3 when he was sixteen would be considered consensual, so no charges should follow, and the "fondling prior will be reviewed by Bob Pelletier." According to Detective Inspector Smith, this was Mr. Griffiths' analysis of C-3's allegations. The Detective Inspector's notes do not reveal whether or not Mr. Griffiths considered a charge of gross indecency.

One of the distinctions between the charges of gross indecency and indecent assault was that consent was not a defence to a charge of gross indecency unless the act occurred in private between a husband and wife or any two persons twenty-one years of age or older, both of whom consent to the act. It is unclear if Mr. Griffiths considered laying such a charge. This might have been a possible solution to his concern about consent. As will be discussed later in this section, some of the Crown counsel involved with the Project Truth prosecutions had different views on the elements of the offence of gross indecency, and I am not

going to find fault with any of their views or interpretation. However, had one Crown been assigned to the management of the prosecutions, there may have been greater consistency on the applicability of that charge.

After assigning the matter to Mr. Pelletier, Mr. Griffiths had no further involvement with the Father MacDonald investigation and prosecution until April 1997.

Robert Pelletier Meets With Investigating Officers

On January 31, 1996, Mr. Pelletier met with Detective Inspector Smith and Detective Constable Fagan. Mr. Pelletier had reviewed the brief and intended to request additional materials from the officers. He requested the records of the civil proceedings filed by the complainants, David Silmsen, John MacDonald and C-3. According to Detective Inspector Smith's notes of the meeting, Mr. Pelletier stated that without them he could not make a decision. Mr. Pelletier testified that his preference was to have all available information, but it was not his position that the Crown was unable to make a decision without first seeing those documents. Mr. Pelletier wrote his opinion before obtaining copies of the civil transcripts.

During this meeting, Mr. Pelletier was provided with a number of additional investigative briefs, including the Cornwall Police Service (CPS) investigation by Constable Heidi Sebalj in 1993 and the Ottawa Police Service's 1994 report. He was also given the settlement agreement between the Diocese and Mr. Silmsen, and materials related to a complaint by Mr. Silmsen against the CPS and the Crown's office regarding the initial decision not to lay charges. At this time, Mr. Pelletier also became aware of the 1994 Crown brief on the investigation of allegations of extortion against Mr. Silmsen concerning his demand for compensation from Ken Seguin. Mr. Pelletier received this brief on February 7, 1996.

It was agreed at this meeting that Mr. Pelletier would review the additional materials and meet with the officers again on February 21 to discuss possible charges.

Robert Pelletier Has Discussions With Counsel for Father Charles MacDonald

The day after Mr. Pelletier first met with the OPP investigating officers, he received a call from Colin McKinnon, counsel for Father MacDonald, to discuss the possibility of criminal charges. Mr. Pelletier testified that he was surprised to receive a call from Father MacDonald's counsel the day after meeting with the OPP officers. He was curious to know how Mr. McKinnon knew that there might be charges laid before he had made any such determination.

In a note to file dated February 1, 1996, Mr. Pelletier wrote that he told Mr. McKinnon "that there appeared to be certain difficulties in relation to the David

Silmser complaints however those would be further examined prior to a decision being made.” Mr. Pelletier testified that he could not recall what difficulties he was alluding to. He said that he came to know that the information provided by Mr. Silmser was in some areas problematic and because of that he recommended against charges for one allegation. Mr. Pelletier could not recall how much detail he and Mr. McKinnon discussed in this conversation, nor how much Mr. McKinnon knew about the allegations at the time. It appears that Mr. Pelletier also told Mr. McKinnon that on their face, the allegations made by John MacDonald and C-3 appeared legitimate.

During this phone conversation, Mr. Pelletier told Mr. McKinnon that he was interested in receiving copies of all materials relating to the civil suit brought by the three complainants against Father MacDonald and the Diocese. Mr. McKinnon’s firm was acting for Father MacDonald in this civil action.

Shortly after his telephone call with Mr. McKinnon, Mr. Pelletier received a call from Mike Hébert, civil counsel to Father MacDonald. In his February 1 note to file, Mr. Pelletier wrote:

Mr. Hébert informed me that Silmser had been cross examined during the examinations for discovery and that it had apparently been a rather difficult time for Mr. Silmser. I advised Mr. Hébert that it would be my intention to review the civil pleadings as well as any transcripts he could obtain in determining whether charges should be laid in respect of Silmser.

At this point, Mr. Pelletier was interested in reviewing the transcripts of the examinations for discovery in the civil suit, as it would be one of the considerations in assessing whether charges should be laid.

Although he did not discuss the possibility of a plea with Mr. McKinnon, Mr. Pelletier recalled requesting he speak with his client “with a view to determining whether there was ‘any middle ground’ with regard to the various allegations.”

Mr. Pelletier asked that Mr. McKinnon provide him with his client’s instructions by the time Mr. Pelletier met with the investigators on February 21.

All three complainants against Father MacDonald were involved as plaintiffs in civil litigation. It is common practice for defence counsel, in examining the motive of the complainant in pursuing a criminal prosecution, to look at financial considerations, including whether the complainant has initiated a civil lawsuit.

Mr. Pelletier testified that as a Crown, whether the complainants are involved in a civil suit is a factor to consider in preparing to prosecute a case. When asked how a Crown would attempt to neutralize the impact of a complainant also suing civilly, Mr. Pelletier responded:

In a judge alone trial, a judge knows well that public prosecution serves the community and a lawsuit serves the plaintiff. So that in a judge alone trial you would submit at the end of the case and remind the judge to instruct himself or herself that the financial aspect is a consideration, but there are two forms of justice, as it were. In a judge and jury trial, what I had done in the past is call a civil lawyer to explain to a jury, give a little lesson on Civil Law 101 to explain that these people are entitled to sue for their personal damages. It's not something the criminal courts can give them.

In my opinion, it is important that all individuals who come in contact with the justice system realize the distinction between the criminal and civil processes. An individual has the right to pursue both processes simultaneously, and everyone should be reminded that the criminal burden of proof, beyond a reasonable doubt, is much higher than the civil burden of proof, which is on a balance of probabilities.

Robert Pelletier Reviews the Briefs

Mr. Pelletier made notes while he was reviewing the briefs and providing his recommendations for charges in February 1996. He testified that he reviewed the relevant *Criminal Code* provisions at the date of the allegations and the relevant sections pertaining to indecent assault. He recommended three charges of indecent assault for the incidents with Mr. Silmsen, three charges of indecent assault for the incidents with John MacDonald, and one charge of indecent assault for the incident with C-3.

Mr. Pelletier did not consider recommending a charge of gross indecency. In his experience, gross indecency was difficult to prove, because it required more than contacts of a sexual nature and involved contacts that were offensive and an affront to people's sensibilities. Having prosecuted several such charges, he remembers securing only one conviction involving conduct that was extraordinarily offensive. Mr. Pelletier believed that the information they had best supported the charge of indecent assault. He did not think gross indecency would apply to an incident of fondling over the clothes.

Shelley Hallett, the Crown attorney who later took over this case from Mr. Pelletier after the preliminary inquiry, had a different view on the offence of gross indecency. She testified that gross indecency was an offence that could be laid with respect to sexual misconduct with a young person that represented a marked departure from the decent conduct expected of the average Canadian in the circumstances. Where appropriate, Ms Hallett suggested a charge of gross indecency be laid in cases she was assigned to prosecute or provide an opinion

about. She testified that had the evidence justified a gross indecency charge, she would have asked the judge to commit Father MacDonald to trial on charges of gross indecency. However, Father MacDonald had already been committed to trial when she took over the case, and she was not prepared at that point to try to change the offences. When C-2, a former altar boy, came forward with his allegation against the priest in 1998, Ms Hallett suggested laying a charge of gross indecency.

Crown attorneys have some discretion in interpreting the law. Mr. Pelletier's approach is more traditional, while Ms Hallett's approach includes the element of public approbation and is more of a purposive approach, in other words, an interpretation based on the underlying purpose of the law. Both approaches to the charge of gross indecency are an appropriate exercise of Crown discretion.

Robert Pelletier Provides an Opinion

Mr. Pelletier met with Detective Inspector Smith and Detective Constable Fagan on February 21, 1996, to discuss the Crown attorney's review of the file. According to Detective Inspector Smith's notes of the meeting, Mr. Pelletier had reviewed the brief and it appeared he would recommend charges against Father MacDonald, but he wanted to read the transcripts from the complainants' civil cases before giving his written recommendation.

In early March, Mr. Pelletier advised Detective Inspector Smith that his written recommendation was completed. He met with Detective Constable Fagan on March 5 and provided him with written instructions regarding the seven charges recommended. Mr. Pelletier also provided Detective Constable Fagan with a draft information regarding the seven counts.

In his written opinion memo, addressed to Detective Inspector Smith, Mr. Pelletier concluded that "reasonable and probable grounds exist for the laying of a total of seven counts of indecent assault in respect of the three complainants." In addition, he wrote that it was his view "that in the event that the complainants testify in a forthright and credible manner, there exist reasonable prospects of conviction in respect of each charge."

Mr. Pelletier referred to previous decisions, in 1993 and 1994, not to pursue this matter through the criminal courts. He noted that in 1993 Crown Attorney Murray MacDonald decided not to pursue the matter largely because of the complainant's wishes not to proceed. In 1994, regional Crown Peter Griffiths decided not to proceed because of a lack of detail, corroboration, and similar fact evidence. Mr. Pelletier was able to distinguish those earlier decisions:

The situation has changed somewhat given that there now exist two complainants who provide, if their accounts are believed at trial,

corroboration of the Silmsers complaint in the nature of similar fact evidence. More particularly, the three complaints now relate to the same suspect, allege similar types of sexual abuse, refer to a similar pattern of behaviour and method, relate to allegations at a time when the complainants were of the similar age, in a similar location, and in the same general time frame. The case against Father Charles MacDonald is certainly reinforced by the most recent complaints by John MacDonald and [C-3]. Accordingly, any prior decision not to proceed with regards to the Silmsers complaint has to be viewed in that light.

There was one incident for which Mr. Pelletier recommended against laying a charge and that was the allegation made by Mr. Silmsers of attempted buggery. Mr. Pelletier based this decision on the fact that Mr. Silmsers gave various contradictory accounts of the incident and could not provide any details about how it took place.

Mr. Pelletier's opinion letter concluded that there was no need to arrest Father MacDonald, but rather arrangements could be made with his counsel to surrender himself. Detective Inspector Smith testified that the Crown would normally not provide this kind of advice and ultimately it was Detective Inspector Smith's decision. On March 6, an information with seven counts was sworn. Father MacDonald was charged on March 11 with three counts of indecent assault against Mr. Silmsers, three counts of indecent assault against John MacDonald, and one count of indecent assault against C-3.

Although Mr. Griffiths was copied on Mr. Pelletier's opinion memo, it was Mr. Pelletier's decision to prosecute. Mr. Griffiths testified that he was copied only as a courtesy.

Mr. Silmsers testified that he did not find out about the charges against Father MacDonald from a police officer or from a Crown attorney. Rather, he found out from John MacDonald, his lawyer, and the media. As will be discussed below, this is an example of the lack of communication between the Crown attorney and the alleged victim that could have been resolved by the assistance of a victim liaison person.

Robert Pelletier's Relationship With David Silmsers

Mr. Pelletier had a difficult relationship with Mr. Silmsers throughout the prosecution. He said that during their first telephone contact on February 7, 1996, Mr. Silmsers explained that he was not satisfied with how the matter was proceeding and became "abusive and vulgar." Mr. Pelletier asked him if he spoke to everyone in that way, because he was taken aback by Mr. Silmsers's attitude. In response, Mr. Silmsers "became even more upset, declared war against the OPP and myself

and hung up the phone.” Mr. Silmsers testified that something must have triggered his call to Mr. Pelletier, such as a media report, which may have made him frustrated that things were not being properly handled. Mr. Silmsers does not believe he was abusive or vulgar during phone calls with Mr. Pelletier. Rather, he was frustrated and at times may have expressed that frustration in an angry manner.

Mr. Pelletier had the impression that if this first conversation had degenerated any further, some threats or veiled threats might have been made, and under those circumstances Mr. Pelletier could not represent the Crown with Mr. Silmsers as a complainant. As a result, he made the decision that it would be prudent to have no further direct contact with Mr. Silmsers. After this conversation with Mr. Silmsers, Mr. Pelletier contacted Mr. Silmsers’s lawyer, Bryce Geoffrey, and informed him that he did not intend to speak directly with Mr. Silmsers anymore and that if Mr. Silmsers had anything to communicate, he should do so through his lawyer. Mr. Pelletier advised his secretary, Mireille Legault, that he would not be taking calls from Mr. Silmsers. He advised Mr. Geoffrey that it would be counter-productive if he spoke to Mr. Silmsers, and that if a serious conflict between them developed it could result in Mr. Pelletier being unable to conduct the prosecution.

Mr. Pelletier never met with Mr. Geoffrey and Mr. Silmsers, and was surprised that Mr. Geoffrey did not suggest such a meeting: “I had expected that Mr. Geoffrey was going to extend his client’s apology and undertaking not to conduct himself that way, and that never came.” Mr. Pelletier acknowledged that he never told Mr. Geoffrey that he was expecting a meeting or an undertaking from Mr. Silmsers’s counsel.

Despite his arrangements with Mr. Geoffrey about Mr. Silmsers not contacting him, Mr. Silmsers continued to call Mr. Pelletier’s office. Mr. Pelletier did not speak to Mr. Silmsers, but his secretary took the calls. On March 18, 1996, Ms Legault prepared a memo for him about a call from Mr. Silmsers during which he told her that Detective Constables Fagan and McDonell were interviewing former altar boys and that Detective Constable McDonell was Father MacDonald’s first cousin. Mr. Silmsers also said that during one interview of an former altar boy, Detective Constable McDonell told him that “Silmsers was a thief and bringing Silmsers down.” Mr. Silmsers agreed that the memo’s description of his conversation with Mr. Pelletier’s secretary is fairly accurate.

Mr. Pelletier testified that he does not recall asking investigators to follow up on whether Detective Constable McDonell was related to Father MacDonald. He did not recall dealing with that officer or receiving any documents from him. Detective Constable McDonell had been involved in the extortion investigation in 1994, but he was not involved in the investigation into Father MacDonald at this time.

Mr. Silmsers recalled calling Mr. Pelletier's office and expressing considerable dissatisfaction. He testified that he did not understand many things, such as why Detective Constable McDonnell was an investigator on the case when he was Father McDonald's cousin. According to Mr. Silmsers, he brought up many points, and "Pelletier was just ignoring them, and not giving me any advice on them. He wouldn't talk to me about it." Mr. Silmsers was also upset about the lack of communication with the Crown: "There was no information given to me at all, I was just sitting there in limbo." Mr. Silmsers did not think he made an excessive number of phone calls to Mr. Pelletier's office.

Because of the March 18 phone call, Mr. Pelletier wrote a letter to Mr. Geoffrey in which he outlined the concerns voiced by Mr. Silmsers and reminded Mr. Geoffrey that communications between Mr. Silmsers and Mr. Pelletier's office should flow through him. Mr. Geoffrey wrote a letter back to Mr. Pelletier on March 21, in which he apologized on behalf of Mr. Silmsers but said that Mr. Silmsers was easily upset from time to time. Mr. Geoffrey said he had spoken to Mr. Silmsers and requested he not contact Mr. Pelletier's office directly, and that he would "renew this request with him" as soon as he could contact him. Mr. Pelletier responded that day with another letter, reiterating that communications should flow through Mr. Geoffrey "in order to maintain a certain level of civility."

Although Mr. Silmsers could not recall whether his lawyer showed him any of these letters, he did recall that his lawyer told him not to phone the Crown Attorney's Office.

On May 2, 1996, Mr. Pelletier wrote a letter to Mr. Geoffrey updating him on recent developments in the Father MacDonald case. He asked Mr. Geoffrey to communicate these developments to his clients. Although Mr. Silmsers did not recall seeing this letter, he acknowledged that Mr. Pelletier was communicating with him through his lawyer.

Mr. Silmsers contacted Mr. Pelletier's office several times on July 19, 1996. Ms Legault took the calls and prepared memos for Mr. Pelletier detailing each call. During the first call, Mr. Silmsers said the lawyers in Toronto had lost the file, which showed how much of a cover-up was going on. Mr. Pelletier testified that he did not know what Mr. Silmsers was referring to with respect to the Toronto lawyers. According to Ms Legault's memo, during the second call, Mr. Silmsers became very angry and said it was costing him money each time he communicated through his lawyer and that he would continue to call the office. Mr. Silmsers also referred to another victim who had been located by a private investigator. The final call that day was a message left by Mr. Silmsers in which he said he was extremely upset and that the Crown did not have the right to refuse his calls because he was a victim and that if he "goes through his lawyer it costs him a lot of money."

Although Mr. Silmsers did not have a specific recollection of these calls, he remembered making a phone call where the secretary hung up on him and he may have phoned two or three times trying to speak to somebody. He said he was probably calling because of the lack of progress on the case and the fact that he was not getting any information. He did not communicate through his lawyer because it cost him money: "Again, every time I phoned my lawyer, he was charging me by the minute on the phone. So if I had to go through my lawyer, I had to pay him and I know I didn't have any money at the time."

Following these calls from Mr. Silmsers on July 19, Mr. Pelletier prepared a memo to file noting his concern that if he spoke with Mr. Silmsers at that time, a conflict would develop that would require him to step down from the case. Mr. Pelletier was concerned about the delay that would be caused if a new prosecutor had to be assigned. As discussed above, this potential for a conflict with Mr. Silmsers had been Mr. Pelletier's concern since the initial conversation he had with Mr. Silmsers in early February 1996.

Mr. Pelletier contacted Detective Constable Fagan about the potential fourth complainant mentioned by Mr. Silmsers but cannot recall if he heard back from the officer about this. Mr. Pelletier testified that it never occurred to him that Mr. Silmsers may have been referring to C-8, an individual who made allegations against Father MacDonald for which charges were later laid. Mr. Pelletier did not know whom Mr. Silmsers was referring to at the time, and he never spoke with Mr. Silmsers about this issue.

If Mr. Pelletier had been speaking with Mr. Silmsers, he may have discovered who this fourth complainant was. As I discuss below, the revelation of C-8's allegations later caused some delay in the prosecution, which may have been partly avoided had his name been known to the Crown as early as July 1996. In my opinion, this is an illustration of the problems caused by the lack of communication between the Crown and a victim in this case.

Both Mr. Silmsers and Mr. Pelletier agreed their relationship was difficult. Mr. Pelletier did not have a meeting with Mr. Silmsers and his lawyer to discuss the situation, nor did he attempt to explain to Mr. Silmsers directly his concerns about the development of a conflict. Mr. Silmsers testified that nobody from the Crown's office ever explained this to him. Mr. Pelletier acknowledged that he had never taken the step of cutting off direct communication with an alleged victim before and it was "a somewhat extraordinary measure." He testified that he did not have any similar arrangement in place with the other two complainants. He said John MacDonald may have called him once and he never spoke with C-3 on the phone.

In my opinion, this once again demonstrates the lack of understanding that Crown counsel at times had for alleged victims of historical sexual abuse and

their circumstances. A liaison person could have played the role of an intermediary and perhaps have assisted in resolving their differences. The introductory paragraph to the “Sexual Assault and Other Sexual Offences” practice memorandum adopted on July 21, 2006, states:

Sexual offences are unique because they involve the violation of sexual integrity and autonomy. Sensitivity to the perspective of victims, their privacy interests, and in particular, the deeply personal and potentially degrading nature of their victimization, must always be borne in mind.

Mr. Pelletier did not consider the fact that it would be costly for Mr. Silmsen to communicate through his lawyer. Mr. Silmsen testified that he was contacting Mr. Pelletier’s office in part because he was not receiving information and was frustrated. Crown Policy V-1, “Victims of Crime,” dated January 15, 1994, states:

In all cases the victim has a right to be informed of the status of the case with which he or she is involved. To this end, Crown counsel are to make themselves reasonably available to respond to inquiries or requests for interviews, from victims at any stage in the trial process. Respect and sensitivity for the victims’ gender, race, culture or disability must be shown.

Requests for information in routine cases can be routed through the investigating officer. In appropriate cases, Crown counsel should communicate with the victim or the victims’ family directly. This kind of communication is essential in most serious cases ...

Mr. Pelletier pointed out during his testimony that the Victim/Witness Assistance Program was not established in Cornwall until 2001. However, as will be discussed in a later section, the VWAP office in Ottawa did provide services to some of the complainants in the Father MacDonald prosecution starting in early 2000. In my opinion, Mr. Pelletier could have taken steps to involve the Ottawa VWAP office in assisting Mr. Silmsen and other complainants in 1996. As Mr. Silmsen said in his testimony, “If a Crown attorney doesn’t want to contact the victim ... he should have a person to relate information to that victim.”

Crown Policy SO-1, “Sexual Offences,” dated January 15, 1994, provided the following:

The complainants shall be interviewed well in advance of the trial and preliminary hearing, and as well be referred to the Victim/Witness

Assistance Program if one is available, other victim services, counselling, or other community services where appropriate. Crown counsel should explain the court process to the victim and arrange to show her the courtroom. Where appropriate and feasible the interview should be conducted in the presence of a support person. At all times the dignity and feelings of the complainant must be respected.

Despite the absence of VWAP services in the area, other alternatives could have been considered by the Crown to assist him in his dealings with Mr. Silmsr. Perhaps he could have asked one of the investigators to provide the information Mr. Silmsr was requesting or have someone else from his office assigned to communicate with Mr. Silmsr. At the very least, Mr. Pelletier should have had a meeting with Mr. Silmsr and his lawyer to discuss a way to facilitate appropriate communication between them.

Judicial Pre-Trial

The case was scheduled for a pre-trial on May 30, 1996. Mr. Pelletier testified that he did not know why the matter was scheduled for such an early pre-trial. The pre-trial was adjourned for a continuance in August 1996, in part because it was agreed that the pre-trial was premature, given that the complainants were being examined in civil discoveries in respect of the same alleged incidents.

At the pre-trial, Justice Paul Bélanger stated that the parties should examine the transcripts of the civil proceedings in order to determine how the matter should proceed. On May 31, Mr. Pelletier wrote a letter to Michael Neville, Father MacDonald's criminal lawyer, requesting copies of the transcripts from the examinations for discovery in the civil suit. At some point, he received portions of the transcripts.

Following the pre-trial in August, the matter was scheduled for a week-long preliminary inquiry in February 1997.

Preliminary Inquiry and C-8's Complaint

The preliminary inquiry commenced on February 24, 1997, and the first witness called was John MacDonald. That evening, C-8 appeared on television and discussed his allegations against Father MacDonald. Mr. Pelletier did not see the media story and became aware of C-8's allegations the following morning when defence counsel raised it with him. Mr. Pelletier was not familiar with C-8's name before February 25.

Mr. Pelletier now understands that a statement was taken from C-8 on January 23, 1997, in which he disclosed allegations against Father MacDonald. Mr.

Pelletier testified that the videotaped statement was not part of the disclosure received from the OPP. It appears that this non-disclosure was inadvertent. Detective Constable Fagan was present in court that morning. He contacted Constable Don Genier and asked him some questions about C-8's allegations. Constable Genier noted, "Fagan apologized because he thought the video he received was a video pertaining to Marcel Lalonde."

The issue of C-8's complaint was raised on the record on February 25. Defence counsel stated that he was not willing to proceed with the preliminary inquiry because of the existence of the videotaped statement of C-8, which dealt with certain allegations against his client. Therefore C-8 could be either a witness or complainant. He argued that what C-8 was alleging could influence the cross-examination of other witnesses. Mr. Pelletier objected to any form of delay or adjournment:

... I don't see how any other potential witnesses at some later date have any bearing on the case presently. There is no indication that this particular person was in any way enlisted by anybody or brought forward through any connection with any other persons who are presently involved in the present preliminary inquiry.

...

Mr. Neville is suggesting, if I understand correctly, that there may remotely be a connection between this individual and others who Mr. Neville feels are part of a larger scheme and, with the greatest respect, we don't have any evidence of that.

The preliminary inquiry was recessed in order to allow counsel to view the videotape in question. During this time, Mr. Pelletier met with Detective Constable Fagan and Constable Genier. The three of them then met with defence counsel.

The meeting did not resolve their differences: the Crown wished to proceed and the defence did not. There was a meeting in the judge's chambers, and defence counsel requested an adjournment until the following morning.

The preliminary inquiry was continued on February 26. The continued cross-examination of John MacDonald was adjourned and C-3 took the stand. After C-3's testimony, the defence requested a further adjournment, which Mr. Pelletier opposed. Mr. Pelletier understood that defence counsel was concerned about his obligation to determine how C-8's complaint came about and if it had any bearing on how the other complainants came forward. However, Mr. Pelletier's position was that the matters were unrelated and the preliminary inquiry should proceed. In his submissions to the Court, Mr. Pelletier noted that C-8:

... makes his statement in January of 1997 in relation to the conduct of this accused vis-à-vis himself. He does not speak of Silmser, he does not speak of MacDonald, he does not speak of [C-3]. He does not provide any, in my respectful view, information or any detail that would change counsel's approach vis-à-vis those witnesses on the merits.

In ruling against an adjournment, the judge stated:

Until there is some concrete evidence before this Court that there is some connection—albeit any connection—between these parties that would impact upon the issues before this Court, I see really no need to delay this matter further.

At this point, the defence indicated his intention to obtain an extraordinary remedy in the nature of a prohibition order. Because of this request, the preliminary inquiry was adjourned to permit counsel to obtain instructions and file his application for a prohibition order. With respect to the delay caused by this development, Mr. Pelletier testified that if the defence requested an adjournment that was denied and then brought a prerogative remedy, the delay would be borne by the defence. An application for a prerogative remedy was never filed.

On March 7, 1997, Mr. Neville wrote to Mr. Pelletier requesting to be advised of any new developments in the police investigation of the C-8 matter. Mr. Pelletier responded by letter dated March 17 that from his most recent discussions with Detective Constable Fagan it appeared as though no further investigation would be made into the circumstances surrounding C-8's complaint. Mr. Pelletier agreed that he was telling Mr. Neville that it was the circumstances surrounding the complaint coming forward, rather than the complaint itself, that would not be further investigated.

In December 1996, Constable Perry Dunlop's lawyer, Charles Bourgeois, had delivered a brief of materials (the "Fantino Brief") to London Chief of Police Julian Fantino. The content and delivery of these materials has been discussed in detail in previous chapters. That material consisted of statements from alleged victims of sexual assault, newspaper clippings, Constable Dunlop's notes, and pleadings from a civil suit he initiated against a number of individuals and institutions. Mr. Pelletier was first advised of the existence of the Fantino Brief on March 18, 1997. Arrangements were made with Detective Inspector Smith to bring him the documents. Mr. Pelletier agreed that the Father MacDonald case began to snowball into a more complex case with the disclosure of the Fantino Brief.

On March 20, Mr. Pelletier met with Detective Inspector Smith and Detective Constable Fagan to discuss the new allegations contained in the Fantino Brief and the statement by Ron Leroux. Detective Inspector Smith's notes of the meeting state that they discussed the direction of the investigation and agreed that the new allegations and information would have to be discussed with Mr. Griffiths. Mr. Pelletier explained that Mr. Griffiths was being advised because he was the Director of Crown Operations for the Eastern Region.

On the same day, Mr. Pelletier sent a package to Mr. Neville containing a number of disclosure items including a statement and affidavit of Mr. Leroux, a statement of Gerald Renshaw, an affidavit of Robert Renshaw, a copy of C-8's videotaped statement of January 23, 1997, and an OPP brief compiled in February 1997 following an interview of Mr. Leroux.

Robert Pelletier's Memo to Peter Griffiths of April 2, 1997

Mr. Pelletier advised Mr. Griffiths of the new allegations arising out of the Fantino Brief, and they decided there should be a meeting with the OPP to discuss them. The meeting was scheduled for April 24, 1997. Before the meeting, Mr. Pelletier prepared a memo for Mr. Griffiths, dated April 2, regarding recent developments in the *R. v. Father MacDonald* case.

Mr. Pelletier outlined the investigation, beginning with the 1993 investigation by the Cornwall Police Service, the settlement between Mr. Silmsier and Diocese, and the subsequent investigation by the Ottawa Police Service. He discussed the fact that Malcolm MacDonald, the lawyer representing the Diocese during the settlement negotiations with Mr. Silmsier, was investigated, charged, and prosecuted for obstructing justice and received an absolute discharge upon pleading guilty. Mr. Pelletier outlined the OPP's 1994 investigation of Father MacDonald and the decision at the time not to recommend that charges be laid.

The memo also discussed the two new complainants, John MacDonald and C-3, coming forward in 1995 and Mr. Pelletier's suggestion that seven charges be laid in relation to allegations of these two new complainants and the initial complainant, Mr. Silmsier. Although charges had been laid, the memo explained that it was not a strong case:

The decision to recommend charges was made on the slimmest possible reasonable prospect of conviction test being met. Clearly, the fact that there now existed three complainants alleging of a similar type of conduct by the priest at a specific location at a particular point in time was the major consideration in recommending charges. It was decided

that at the very least, the complainants would be given an opportunity to testify at the preliminary inquiry and the reasonable prospects of conviction could be assessed thereafter.

The role of Constable Dunlop in the matter was also raised in the memo:

The complicating factor in this particular prosecution is the involvement of Perry Dunlop. Mr. Dunlop was exonerated by the Police Service Act Court and has since began [sic] a crusade aimed at exposing what he perceived to be a conspiracy in Cornwall by a certain number of named conspirators to obstruct justice, suppress evidence, and generally undermine the credibility of those such as Dunlop who have attempted to expose this conspiracy. Dunlop has instituted civil proceedings claiming several millions of dollars against a number of named defendants both individuals and bodies corporate.

Mr. Pelletier outlined some of the allegations made by Constable Dunlop against people and institutions in the community. He noted that although Crown Attorney Murray MacDonald was not named as a defendant, he “is named in various paragraphs in the context of various clandestine meetings and arrangements involving certain named defendants and others.”

Mr. Pelletier then reviewed the most recent allegations against Father MacDonald made by C-8 and Mr. Renshaw, in the Fantino Brief. He also wrote about the claims concerning a “clan of pedophiles,” whose members allegedly included Father MacDonald and Murray MacDonald.

Mr. Pelletier wrote that he was not convinced that the allegations were well founded. He also testified that early on he had some concerns about the allegations about a clan of pedophiles. In particular, he did not feel that the allegations against Murray MacDonald were well founded.

Mr. Pelletier noted in the memo that Constable Dunlop and others believed there was a conspiracy “involving illegal sexual activities and cover ups”:

Given three unfortunate coincidences, firstly the conviction of Murray MacDonald’s father, secondly Murray MacDonald’s decision initially not to pursue criminal charges in respect of David Silmser, and thirdly, Malcolm MacDonald’s conviction for obstructing justice, the Dunlop group are convinced of the existence of a conspiracy.

When asked about what he meant by “unfortunate coincidences,” Mr. Pelletier testified that he considered each of these matters to be unfortunate and that the

convergence of the three could be a confirmation for those who believed there might be a conspiracy:

You've got a Crown Attorney's father who's convicted for sexual assault; you've got the same Crown Attorney who initially decided there shouldn't be charges; and you've got a former Crown Attorney who's convicted for obstructing justice in relation to arrangements made with the same complainant. So it's the convergence of those three events that led me to phrase it in that way.

Mr. Pelletier also raised the issue of a potential conflict in his continuing with the prosecution given his personal and professional relationship with Murray MacDonald. It is worth setting out this paragraph in its entirety:

Ultimately, a decision will have to be taken whether or not to recommend further charges against Charles MacDonald in relation to the new complainants Robert Renshaw and [C-8]. A decision to recommend charges would lend credence to these individuals' claims including the conspiracy theory. A decision not to recommend charges would in all likelihood be seen as the latest in the obstructive measures employed by those in authority. It is in this connection that my personal as well as professional affiliations with Murray MacDonald become a complicating factor. Your views in this regard would of course be very much appreciated.

Mr. Pelletier testified that he thought that laying charges would validate the Fantino Brief and elevate its claims to a higher standing. On the other hand, the decision not to recommend charges could lead those who felt there was a conspiracy to view that decision as the latest in "obstructionist measures." Mr. Pelletier felt that he should not review the brief or make any recommendations regarding the new allegations. He was concerned because Murray MacDonald was mentioned as a member of the group that conspired together, and Mr. Pelletier was well acquainted with him both professionally and personally. He was asking Mr. Griffiths for instructions on whether he should be involved in any of the Fantino Brief review.

In my view, it is clear that in this memo, Mr. Pelletier is expressing less confidence in the case than he did when he recommended that charges be laid in March 1996. He was also concerned about the allegations being made against his friend Murray MacDonald.

Mr. Griffiths understood at the time that Mr. Pelletier thought he should not review these new allegations, and Mr. Griffiths agreed. He testified that "he

wasn't comfortable doing it ... and I respected that." According to Mr. Griffiths, there was no thought given to transferring the prosecution of Father MacDonald at that time, as all of these matters were to be discussed and considered at the meeting scheduled for April 24, 1997:

The Dunlop brief fell like a bomb in the middle of the preliminary hearing of Father MacDonald, which at that point was ... 13 months, 14 months since Mr. Pelletier's initial involvement in February of '96 and the onset of the charges. So time was ticking with respect to that preliminary hearing with those three complainants. And a decision was made to keep Mr. Pelletier in place to the conclusion of the preliminary hearing so that there would be no loss of time on that.

Mr. Griffiths' understanding was that once the preliminary hearing was completed, Mr. Pelletier would no longer be involved. Mr. Pelletier has a different recollection of that matter. He believed he would continue with the prosecution of Father MacDonald after the completion of the preliminary inquiry. Mr. Pelletier does not recall that his involvement would terminate after the preliminary inquiry.

Mr. Pelletier continued as prosecutor in the *R. v. Father Charles MacDonald* case until spring 1999 when the prosecution was assigned to Shelley Hallett. The circumstances leading to this transfer will be discussed in the section "*R. v. Father Charles MacDonald: New Charges Laid and Trial.*"

The Initiation of Project Truth and Assignment of Crowns

As discussed in Chapter 7, "Institutional Response of the Ontario Provincial Police," on March 20, 1997, Detective Inspector Tim Smith, Detective Constable Michael Fagan and Crown Attorney Robert Pelletier met to discuss the Fantino Brief. It was decided that Mr. Pelletier would review the Fantino Brief and arrange a meeting with the Director of Crown Operations, Eastern Region, Peter Griffiths. This meeting was scheduled for April 24, 1997.

Meeting of April 24, 1997

The meeting on April 24, 1997, was attended by Detective Sergeant Pat Hall, Detective Constables Fagan and Don Genier, Detective Inspector Smith, and Crown Attorneys Peter Griffiths, Murray MacDonald, and Robert Pelletier. Mr. Griffiths made the decision to have Mr. Pelletier and Mr. MacDonald at the meeting. The purpose of the meeting was to determine the course of action in

light of the Fantino Brief. However, the brief included allegations against Murray MacDonald personally.

Mr. MacDonald testified that when he arrived, the meeting had already started and that he left before everyone else. According to Mr. Griffiths, Mr. MacDonald was invited to the meeting because these events were occurring in his jurisdiction and the instructions as to how the matter was to proceed needed to be clear to him. It was decided at the meeting that neither he nor any staff from his office would provide legal advice or prosecute cases arising from the investigation of the Fantino Brief. He was also advised that his conduct would be reviewed. In hindsight, I question the appropriateness of having Murray MacDonald attend the meeting because of the conflict of interest arising from the allegations against him.

It was also decided at the meeting that the Ontario Provincial Police (OPP) would investigate all of the allegations in the Fantino Brief. Detective Inspector Smith suggested that Mr. Griffiths write to the Superintendent of the OPP. The Detective Inspector believed that Mr. Griffiths had the authority under the *Crown Attorneys Act* to request that the OPP conduct an investigation. Mr. Griffiths was not aware of any such statutory authority but agreed to write a letter requesting that someone be assigned to investigate the Fantino Brief.

On May 27, 1997, Mr. Griffiths wrote a letter to Superintendent Larry Edgar requesting “that Det. Insp. Smith be assigned to investigate the Dunlop/Bourgeois brief.” After writing this letter, his involvement in Project Truth was minimal. He was appointed as a judge of the Ontario Court of Justice in May 1998.

Should There Have Been a Dedicated Crown?

Mr. Griffiths testified that at or around the time of the April 24, 1997, meeting, Curt Flanagan, the Brockville Crown attorney, was asked to be the liaison person with the OPP investigation on behalf of the Crown. Mr. Griffiths explained that Mr. Pelletier was not to be the point person as he had expressed his discomfort in being involved. Somebody needed to fulfill that function, and Mr. Flanagan had some experience with the prosecution of Malcolm MacDonald for obstructing justice. The OPP’s operational plan for Project Truth provided that Mr. Flanagan would be the Crown to provide legal opinions and prosecute cases. I also reviewed evidence that Shelley Hallett recalled Mr. Flanagan recommending that there be a team of Crowns to work on Project Truth. However, Mr. Flanagan had no recollection of making that recommendation. He never assumed the liaison role, and unfortunately no one else did either.

James Stewart, Mr. Griffiths' successor as Director of Crown Operations for the Eastern Region,⁶ noted that when he became involved, the prosecutions were "up and running." He does not recall any discussion about having a dedicated team of Crowns. He thought at the time that things appeared to be under control but acknowledged that the assignment of Crowns may have been approached differently "if we knew everything that we knew right now."

As for his role, Mr. Stewart maintained some supervisory control over the files in the sense that both Alain Godin and Ms Hallett informed him about what was happening in the cases, although it "wasn't very often." Mr. Stewart explained that they had to be careful about a potential conflict because Murray MacDonald worked directly for him.

Mr. Pelletier agreed that in large prosecutions with multiple offenders and multiple victims, thought should be given to assigning a dedicated Crown to conduct the prosecutions. He explained, however, that one of the complicating factors with Project Truth was that it was a work in progress. Project Truth began with three complainants against a local parish priest and became an investigation into complaints by dozens of people against almost as many local figures.

Detective Inspector Hall agreed that having a dedicated Crown from the beginning would have been "helpful." He believed that not having a dedicated Crown led to a major delay in the OPP concluding its investigation in Cornwall.

I am of the view that a dedicated Crown should have been assigned early on in the Project Truth investigations to assist the investigators and direct the prosecutions. When Project Truth officers were first made aware of the Fantino Brief and the allegations made by Claude Marleau, there were allegations against twenty-seven individuals. As early as the summer of 1997 it became apparent that serious consideration should have been given to the need for a dedicated Crown. This issue should have been discussed at that time.

This Crown would not have been prosecuting specific cases but could have provided direction to some of the investigations, given pre-charge advice, provided timely opinions to the investigators, reviewed Crown briefs, assigned cases to be prosecuted, and monitored their progress. A dedicated Crown would have been familiar with every prosecution. This would have ensured consistency in decision making, encouraged the sharing of expertise, and opened lines of communication to discuss cases. A dedicated Crown could also have assisted in the request for and management of resources and assisted in the set-up of a disclosure tracking system. I recommend that in future special projects of this magnitude, a dedicated Crown should be assigned to assist throughout the investigation.

6. Robert Pelletier was the Acting Director after Peter Griffiths left in May 1998. James Stewart took over the position in January 1999.

Murray MacDonald's Office Handles Disclosure Prior to Crowns' Being Assigned to Prosecutions

Mr. MacDonald had been told during the April 24, 1997, meeting that his office was not to prosecute Project Truth cases or provide legal advice to Project Truth officers because of a perceived or real conflict of interest. The Cornwall Crown's office did, however, have some minor involvement in Project Truth prosecutions.

In July 1998, a number of Crown briefs were sent to the Cornwall office because there was not yet a Crown assigned. Requests for disclosure from defence counsel were also sent to the local Crown's office during the summer to be forwarded to the appropriate Crown. Mr. MacDonald testified that he forwarded these requests to Mr. Pelletier as soon as they were received. As late as October 1998, even after Crowns had been assigned to prosecutions, disclosure was being sent through the Cornwall office. As we have seen in earlier sections, the Cornwall Crown Attorney's Office was also called upon to attend routine court appearances in Project Truth cases.

Although it had been determined early on that Murray MacDonald was not to be involved in any of these investigations and prosecutions, he ended up in possession of some of the briefs to be disclosed. This is another problem created by not having a dedicated Crown assigned to these investigations. Although I find it was acceptable to use the Cornwall Crown Attorney's Office for routine matters, someone from the office should have been designated to handle these issues, and any correspondence or material should have been addressed to that individual and not Murray MacDonald.

Assignments of Project Truth Prosecutions

One of the difficulties in Project Truth prosecutions was the initial assignment of Crowns. At the outset, Mr. Pelletier took on a number of matters and reviewed them to provide an opinion on charges.

On July 24, 1998, Detective Inspector Smith wrote to Mr. Pelletier that "it has been several months since we first attempted to have outside Crown Attorneys assigned to prosecute the charges resulting from the investigation 'Project Truth.'"

By then, Ms Hallett had been assigned to the Jacques Leduc, Dr. Arthur Peachey and Malcolm MacDonald matters, but a number of cases had yet to be assigned. Mr. Pelletier, who, at the time, was Acting Director of Crown Operations, Eastern Region, was looking for a bilingual Crown from outside the jurisdiction to assume responsibility for some of these cases.

In mid-August 1998, he sent a number of Crown briefs to Tom Fitzgerald, Director of Crown Operations, Northern Region, who was going to assign them to one of his Crown attorneys. In mid-September it was confirmed that Mr. Godin would take carriage of these prosecutions.

Resources Available to Crowns in Project Truth Prosecutions

Both Ms Hallett and Mr. Godin addressed the lack of resources available to Crowns in the Project Truth prosecutions and mentioned that they were accustomed to dealing with a certain lack of resources. Mr. Godin had worked in rural communities in Northern Ontario where resources were not readily available. Ms Hallett explained that in her experience conducting special prosecutions throughout the province, there are often problems with physical resources such as office space. She said the problem arises because of the desire of the local Crown's office to maintain the perception of an arm's-length prosecution because of an allegation of a conflict of interest.

In January or February 2001, Ms Hallett asked the local Crown attorney, Murray MacDonald, if she could be assigned a separate office, but there were none available. Ms Hallett also "pleaded" unsuccessfully for an office with James Stewart. Mr. Stewart testified that he did not realize Ms Hallett had concerns about office space. During the Jacques Leduc trial, Ms Hallett was provided with a sort of cloakroom in the courthouse with a few chairs and a washroom. The Crowns and the police would leave their shoes, boots, and coats there during the day. According to Ms Hallett, this was not an adequate place to have interviews with witnesses or meetings with defence counsel.

For the most part, victim and witness interviews took place at Ontario Provincial Police detachments. Both Mr. Godin and Ms Hallett used their hotel rooms as an office and would often meet with the officers in their hotel rooms.

I am of the view that it is difficult enough to conduct the prosecution of conflict cases without the additional burden of dealing with inadequate resources. If an outside Crown is required to prosecute a case, it necessarily means that the local Crown's office is in a conflict of interest or at the very least in an appearance of a conflict. These prosecutions will probably never be able to rely on the local Crown's office. The Justice Prosecutions Unit should provide sufficient staff and equipment to properly set up temporary offices to permit Crowns to prosecute these cases.

One of the recommendations from the 2008 LeSage-Code *Report of the Review of Large and Complex Criminal Case Procedures* provides that the "conduct of long complex criminal prosecutions must be assigned, to the greatest extent possible, to the most able and most respected prosecutors." In my view, the prosecutors assigned must not only be able in terms of their competence but also must be provided with adequate resources and be relieved of other responsibilities to allow them to be dedicated solely to the major prosecution.

Although the LeSage-Code Report provides excellent recommendations for how to manage major cases, it does not address major case management in small communities. A number of issues arise in small communities, such as the fact that

prosecutors may need to travel significant distances. In addition, the threshold for defining a major case and the factors that make a case “major” may be different in a small community than in a large urban centre.

Prosecutions Related to Allegations Reported by Claude Marleau

Claude Marleau disclosed allegations of historical sexual abuse against a number of men from the Cornwall area. The details of these allegations have been set out in Chapter 7, on the institutional response of the Ontario Provincial Police (OPP), and Chapter 8, on the institutional response of the Diocese of Alexandria-Cornwall. On July 31, 1997, Mr. Marleau provided a statement to Detective Constable Don Genier.

Crown Briefs Provided to Crown for Opinion on Charges

On April 1, 1998, Crown Robert Pelletier was provided with briefs pertaining to a number of alleged abusers of Claude Marleau: Roch Joseph Landry, Father Paul Lapierre, George Sandford Lawrence, and Dr. Arthur Blair Peachey. On April 3, Mr. Pelletier was provided with a further brief of allegations against Father Kenneth John Martin. Mr. Pelletier was to review the Crown briefs and provide an opinion on criminal charges.

On May 7, 1998, Mr. Pelletier provided Detective Inspector Tim Smith with a memorandum on all of the allegations in these Crown briefs. Mr. Pelletier was of the opinion that the matters involving Dr. Peachey, Father Martin, and Mr. Lawrence should proceed to a preliminary inquiry. Mr. Pelletier suggested that following the preliminary inquiry, the merits and public interest of each case be assessed to determine if they were sufficient to prosecute the accused. Furthermore, he wrote that consent was an issue in these cases. Mr. Pelletier had “no hesitation whatsoever in recommending charges against Roch Joseph Landry” and Father Lapierre.

Mr. Pelletier’s memorandum to Detective Inspector Smith raised the issue of who would prosecute these cases:

As we have discussed, it would likely be impossible for myself to conduct all of these prosecutions particularly given my present posting at the Regional Office in Ottawa. I would be pleased to further discuss with you the possibility of resorting to the services of the special prosecutions unit of the criminal law division. Similarly, we may wish to consider the services of experienced and bilingual prosecutors within the region.

Mr. Pelletier testified it was never his intention to take on these prosecutions.

Assignment of Crowns to the Prosecutions of Claude Marleau's Allegations

Mr. Pelletier had started in his position as Acting Director of Crown Operations, Eastern Region, on May 1, 1998. He was responsible for finding a Crown to conduct a number of prosecutions, including those arising from Claude Marleau's allegations: Father Lapierre, Father Martin, Mr. Lawrence, and Mr. Landry. The case of Dr. Peachey, a former Coroner, would be prosecuted by someone from the Special Investigations Unit, the office responsible for prosecutions of justice-related officials.

As of July 30, 1998, no Crown had yet been assigned to the cases. On August 11, Mr. Pelletier wrote to Tom Fitzgerald, Regional Director of Crown Operations, Northern Region, confirming that he agreed to assign one of his Crowns to these cases, which required a bilingual Crown from outside of the jurisdiction. Alain Godin was assigned to conduct these prosecutions. He was advised that it was a large project. Detective Inspector Pat Hall received confirmation that Mr. Godin was assigned to these cases on September 17, 1998.

Meanwhile, on July 2, Milan Rupic, Acting Director of Special Investigations, the office responsible for prosecutions of justice-related officials, met with Shelley Hallett and advised her that Murray Segal, the Assistant Deputy Attorney General, Criminal Law Division, had requested that she assist with the prosecutions in Cornwall.

Ms Hallett was designated as a "specialist" in child abuse and domestic violence prosecutions in 1983. As part of her work with the Crown Law Office—Criminal and the Special Investigations Unit, she had prosecuted several sexual assault cases where charges had been laid against individuals involved in the administration of justice.

She was asked to conduct the prosecution of Dr. Peachey, as well as that of Jacques Leduc, another Project Truth prosecution. She was also asked to review and provide an opinion about whether to lay charges against Malcolm MacDonald. Ms Hallett was asked to take on these three prosecutions because the accused were involved with the administration of justice.

Ms Hallett received the Crown briefs for these investigations from the OPP on July 7, 1998. The Jacques Leduc and Malcolm MacDonald cases are discussed in later sections of this chapter.

At the time of Mr. Godin and Ms Hallett's assignment, all alleged perpetrators related to the Marleau allegations had been charged. The two Crowns did not recall being provided with Mr. Pelletier's opinion on the charges in these cases. Ms Hallett noted that she would have appreciated receiving more background information when she got involved in Project Truth. I have previously given my views on the value of having Crown opinions to investigators reduced to writing

and delivered in a timely fashion and the basis for the opinion documented. These opinion letters should follow the prosecution file regardless of which Crown counsel eventually prosecutes the matter. Crown counsel should have a tracking system so their opinion letters can be retrieved if and when charges are eventually laid.

Interactions and Relationship Between the Crowns and Claude Marleau

Mr. Marleau first met with Ms Hallett and Mr. Godin at the OPP Long Sault Detachment on October 19, 1998. During this meeting, Mr. Marleau was advised that Ms Hallett was assigned to the Dr. Peachey prosecution and that Mr. Godin would be prosecuting the remaining cases.

In preparation for the upcoming preliminary inquiries, Mr. Marleau met again with the Crowns, Mr. Godin and Ms Hallett, and Detective Constable Steve Seguin on March 4, 1999. During this meeting, the workings of the criminal justice system were explained to Mr. Marleau. Another meeting took place on March 5 between Mr. Marleau, Detective Constable Seguin, and Mr. Godin during which they discussed the fact that fourteen was the age of consent at the time of the alleged offences. Charges of indecent assault had been laid against a number of individuals, and some of them were also charged with gross indecency. As discussed in the section “*R. v. Father Charles MacDonald: Charges Laid and Preliminary Inquiry*,” one of the distinctions between the two charges is that consent can be a defence to the charge of indecent assault but not to gross indecency.

As discussed in Chapter 7, there were some language issues with the investigation of Mr. Marleau’s allegations and the subsequent prosecution of his alleged abusers. Mr. Marleau was bilingual but had a preference for and a greater facility in the French language. His first language is French, and he had worked in French for more than twenty-five years.

When Mr. Godin met with Mr. Marleau, they spoke French. However, when Ms Hallett was present they spoke in English, because according to Mr. Godin, Ms Hallett did not understand French. Yet Ms Hallett was designated as a bilingual prosecutor in 1980 and had prosecuted a number of cases in French. Ms Hallett eventually stopped prosecuting cases in French, as she did not feel comfortable holding herself out as a bilingual prosecutor in complex cases.

Ms Hallett did not recall having a discussion with Mr. Marleau about his linguistic preferences. Mr. Godin, on the other hand, recalled advising Mr. Marleau of his right to testify in French.

As I have indicated in Chapter 3, “The Impact of Child Abuse,” victims of historical sexual abuse are fragile and emotional, and require a great deal of courage to tell their story to an investigator or a prosecutor. They should be accommodated in the language of their choice throughout the entire process.

Relationships Between Crowns and Police and Between Crowns

Because Mr. Marleau was involved in a number of prosecutions, he had the opportunity to witness the interactions between the Crowns and police officers. He testified that the relationship between the Project Truth officers and Ms Hallett seemed strained. Mr. Marleau also said he observed disagreements between the police officers and the Crown about the direction to take concerning Constable Perry Dunlop. Mr. Marleau recalled that Ms Hallett and Mr. Godin had different approaches to their cases. The Crowns discussed the use of expert testimony in his presence and seemed to have opposing views on the matter. Both Ms Hallett and Mr. Godin acknowledged that they had a difference of opinion concerning the use of expert testimony. Despite these differences, Ms Hallett described her relationship with Mr. Godin as a good working relationship. According to Ms Hallett, they had animated discussions in Mr. Marleau's presence because he was a lawyer himself. Mr. Godin also agreed that there were some vigorous discussions about expert testimony in the presence of Mr. Marleau and that perhaps they could have resolved their differences outside of his presence.

Crown counsel at times forgot that Mr. Marleau was a complainant of historical sexual abuse. He should have been treated as a victim rather than a colleague.

Crown Preparation and Views on Expert Testimony

Ms Hallett's standard practice was to request assistance from students working at the Crown Law Office to prepare research memoranda in preparation for prosecutions. In the case of Dr. Peachey, Ms Hallett received assistance from Ellie Venhola in the preparation of legal memoranda.

Ms Hallett considered calling expert testimony and requested a memorandum on the admissibility of expert testimony. The 1998 *R. v. D.D.* decision from the Ontario Court of Appeal held that expert testimony on delayed disclosure and timing of disclosure was inadmissible. But at the time, there was conflicting case law on the admissibility of such evidence. Ms Hallett retained the services of an expert, Dr. Louise Sas, for testimony in *R. v. Peachey*. She intended to present expert testimony on delayed disclosure, incremental disclosure, youth at risk of sexual exploitation, and medical standards of practice. Years later, the Supreme Court of Canada upheld the decision of the Ontario Court of Appeal regarding the inadmissibility of such evidence.

Ms Hallett had several other memoranda prepared for her on topics such as the issue of consent and the factors that might vitiate consent, retrospective offences, invalid law, and delayed disclosure. Ms Hallett testified that many of the arguments made in these memos were incorporated in her pre-trial conference report, which she shared with Mr. Godin. For example, she indicated in the pre-trial conference

report that she intended to call expert evidence in the *R. v. Peachey* case. Mr. Godin submitted a pre-trial conference report in the *R. v. George Sandford Lawrence* matter, dated September 7, 1999, which stated that he would possibly call an expert on the behaviour and reactions of young persons subjected to lengthy periods of sexual abuse. Mr. Godin testified that he included the reference to expert testimony to keep the door open. He explained that initially he considered calling an expert but was satisfied that the evidence could establish that consent was vitiated. As discussed below, he was precluded from calling this evidence at trial.

Disclosure Requests by Defence

On November 20, 1998, Don Johnson, the former Crown attorney who was the defence counsel for a number of Mr. Marleau's alleged abusers, requested the disclosure of Constable Perry Dunlop's involvement in these matters. As discussed in Chapter 7, the contacts between Mr. Marleau and Constable Dunlop were very limited. At the time, Mr. Godin reviewed four binders of material from Constable Dunlop that were in the possession of Project Truth and determined there was no relevant material in them and they should not be disclosed.

On April 21, 1999, shortly before the commencement of the preliminary inquiries, Mr. Johnson requested further disclosure following comments made by MPP Garry Guzzo in the media. Among other things, Mr. Johnson requested the affidavits and documents that Constable Dunlop had delivered to the Ministry of the Attorney General and the Ministry of the Solicitor General (referred to in this Report as the "Government Brief"), and to London Chief of Police Julian Fantino (the "Fantino Brief"), as well as any notes or statements taken by Constable Dunlop, his wife, or his brother-in-law, Carson Chisholm. Mr. Godin had a telephone conversation with Mr. Johnson and they agreed on which documents should be disclosed.

Mr. Godin took the position that the materials in the Government Brief were irrelevant and he would not disclose them. He advised Mr. Johnson that if he wanted these documents disclosed, he should bring an application to compel disclosure. Mr. Godin further advised that all relevant materials that Project Truth had obtained from the Dunlops or Carson Chisholm had been previously disclosed.

On May 6, 1999, defence counsel brought an application before Justice Gilles Renaud for the adjournment of the preliminary inquiry to permit the defence to bring a disclosure application. In his ruling, Justice Renaud stated that he was not prepared to grant the adjournment, pending an application for disclosure before the Superior Court. At the Crowns' suggestion, Justice Renaud agreed to review the documents in question and provide guidance on disclosure. On May 7, he

ruled, “With respect to all of this material, there is absolutely nothing that in any way appears to remotely assist the defence from any perspective.”

Justice Renaud and the Crown were being innovative by having the preliminary inquiry judge make such a decision, despite his not having the jurisdiction to bind the parties. The 2008 Lesage-Code *Report of the Review of Large and Complex Criminal Case Procedures* addressed the difficulties associated with “the trial judge” being the only one with jurisdiction to deal with these types of applications and binding the parties. In particular, Justice Patrick LeSage and Professor Michael Code made three recommendations (numbers 9, 10, and 11) that would permit a judge to make these types of rulings at an early stage of the proceedings. I endorse these recommendations and invite the Ministry of the Attorney General to consider the proposed amendments.

The Perry Dunlop issue resurfaced around June 2001 when the OPP obtained several banker’s boxes of materials from Mr. Dunlop. Mr. Godin determined that there was nothing in the banker’s boxes relevant to the matters he was prosecuting and invited defence counsel to review them.

Mr. Dunlop was called as a witness in the *R. v. Father Paul Lapierre* trial. Defence counsel agreed that he would testify in these proceedings and that the transcript of his testimony would be filed in the other proceedings related to Mr. Marleau.

Preliminary Inquiries

On May 17 and 18, 1999, Justice Renaud presided at the *R. v. Roch Joseph Landry* preliminary inquiry in Cornwall and committed the accused to stand trial.

From May 19 to 27, 1999, Justice Renaud heard the preliminary inquiries for *R. v. Father Paul Lapierre*, *R. v. Father Kenneth John Martin*, *R. v. George Sandford Lawrence*, and *R. v. Dr. Arthur Blair Peachey*. On May 27, Justice Renaud committed all four accused to stand trial.

In the course of these preliminary inquiries, on May 20, Mr. Godin advised the judge of the theory he wanted to put forward:

There will be a theory put forward by the Crown that there was a type of grooming going on with Monsieur Marleau. A grooming from a young age and that as a result of being groomed and he was introduced to another party. He was then subject to further abuse and the grooming started when Mr. Landry was committing the acts and then afterwards this continued on from party to party and that there was a thread between all the parties which was common.

The grooming of victims was explained to this Inquiry by Dr. David Wolfe and is discussed in Chapter 2, “Expert Evidence on Child Abuse.” Mr. Godin explained the applicability of the grooming theory by noting:

... the grooming goes as to what is in Monsieur Marleau's mind, at the time, and it goes to the issue of consent, whether he could consent or not consent, because the ages overlap to the point where we have to look at certain ages when certain things occurred. And to do that, then we have to go into the other ones and ask him to comment on when he was introduced. So it's not so much a conspiracy but what Monsieur Marleau thought and felt when he was being introduced to other parties.

Justice Renaud accepted Mr. Godin's argument and ruled in favour of holding a joint preliminary inquiry for Father Lapierre, Father Martin, Mr. Lawrence, and Dr. Peachey. Justice Renaud thus agreed to have Mr. Marleau testify about the abuse he suffered from many of his alleged abusers, rather than testifying about his experiences with each accused singly. This permitted the Crown to advance the "grooming theory" to answer an argument that Mr. Marleau may have consented to some of the acts.

Although this certainly assisted Mr. Godin in obtaining a committal to trial, it may have given him a false sense of security as to the strength of his case at the upcoming trials, which would be held separately. Mr. Marleau testified that he was able to speak of all allegations of abuse during the preliminary inquiries but he was never again able to testify about the entire sequence of events surrounding his abuse by multiple perpetrators.

Media Coverage

Mr. Godin's statement during the preliminary inquiry proceedings that there was a connection between the various accused was reported on May 21, 1999, in a broadcast by Maureen Brosnahan of CBC Radio 1. In the same report, Klancy Grasman, Deputy Director of the OPP's Criminal Investigation Branch, was quoted saying that "there is no evidence at all that there was any type of organized ring or common thread through any of this."

Detective Inspector Hall was concerned by the conflicting messages being sent out by the OPP and the Crown in relation to whether or not there was a ring. He discussed the matter with Mr. Pelletier and Ms Hallett. He also spoke to Mr. Godin about the report. Detective Inspector Hall believed the report breached the publication ban order issued in these cases.

On July 12, 2000, he wrote to Marlene Gillis, Assistant Coordinator at the Freedom of Information and Protection of Privacy Service in the Ministry of the Solicitor General. He enclosed a transcript of the Brosnahan report and said that he had discussed the matter with three Crown attorneys, "who all agreed that Brosnahan had violated the order." Ms Hallett testified that she never saw this letter and that she did not believe there was a breach of the publication ban or that further action was required.

In my view, in a major or high-profile case there should be a media representative speaking on behalf of both the police and the Crown Attorney's Office to ensure that the message disseminated to the public is clear, accurate and represents the position of both institutions. The Ministry of the Attorney General should perhaps have a practice memorandum dealing with media issues.

Trials

R. v. Dr. Arthur Blair Peachey

Dr. Peachey died in December 1999, before the start of his trial. The charges against him were withdrawn on December 8, 1999.

R. v. Roch Joseph Landry

Shortly before Mr. Landry's trial, Mr. Godin learned that Mr. Landry was very ill. Defence counsel made a request for an adjournment before the trial judge on September 29, 2000, indicating at the outset that a waiver of section 11(b) of the *Charter* would apply. This waiver was an acknowledgment by Mr. Landry that he agreed with the delay and would not later argue that his right to be tried within a reasonable time had been breached as a consequence of this specific adjournment.

Terrance Cooper attended for the Crown and said that the Crown was prepared to proceed on the date set for trial and was neither joining in the defence application for an adjournment nor opposing it. Justice Gordon Sedgwick granted the adjournment. Mr. Landry died on October 24, and the charges against him were withdrawn on December 20, 2000.

R. v. Father Paul Lapierre

The trial of Father Lapierre was held from September 4 to September 7, 2001. Mr. Godin chose to start with the trial of Father Lapierre in order to have the accusations heard chronologically. He was of the opinion that this case had the most evidence.

One of the central issues in the case was the age of Mr. Marleau at the time of the alleged abuse. If Mr. Marleau was more than fourteen years old at the time of an incident, evidence had to be led that he had not consented to the act. Mr. Godin intended to put forward a theory of grooming to establish that Mr. Marleau had not consented. However, unlike the preliminary inquiries, which were heard jointly by one judge, each accused was tried separately before a different judge.

Mr. Godin was faced with objections from defence counsel when he attempted to question Mr. Marleau on his allegations against the other accused. Justice Paul Lalonde ruled that Mr. Marleau could be asked questions to establish the

grooming theory and reserved his decision on whether the theory was established. On the following day, defence counsel raised further objections to the Crown leading evidence with respect to allegations related to Father Martin, because Mr. Johnson was also acting as defence counsel for Father Martin. After a recess the judge returned and ruled:

I will sustain the objection of Mr. Johnson. ... First of all, it's supposed to be admissible as part of a narrative ...

In my case, I think I'm beginning to understand what's go on [sic] with the evidence that I've had so far and I don't need the evidence concerning Ken Martin, especially if it means that counsel Johnson will be placed in a conflict of interest in that he might have—I'm not saying that he would—that he might have to call his clients in rebuttal and cause a mistrial. I don't want any mistrial in this matter and I'm not going to take this chance.

As such, Mr. Godin was unable to present evidence pertaining to Father Martin, Mr. Lawrence, and Dr. Peachey.

Another issue raised at the Father Lapierre trial was penitent-confessor privilege. During Mr. Godin's cross-examination of Father Lapierre, he said that he had received confidential information during the confession of other priests. He was prepared to disclose the content of the confession if he could do so. Mr. Godin accepted the privilege and said he did not wish to further explore the issue, although this is not a form of privilege recognized by courts in Ontario. Mr. Godin explained that from a tactical standpoint, instead of making submissions and prolonging the matter, he believed he had sufficiently explored Father Lapierre's credibility on the issue. This was an unfortunate lost opportunity to obtain information of allegations against other priests.

On September 13, 2001, Justice Lalonde acquitted Father Lapierre because the Crown had not proven its case beyond a reasonable doubt. He did, however, state that he believed Mr. Marleau and that consent was not an issue. He found that Father Lapierre represented an authority figure and that there was a power imbalance in the relationship between a priest and a young boy.

At the end of his decision the Judge raised one last issue, which I believe was *in obiter*. Justice Lalonde noted:

My assessment of the evidence leaves me with a conflict, and as unsatisfactory as it may be, that is not unusual, especially in historic sexual cases involving only two persons who would be able to identify

the truth, Claude Marleau and Paul Lapierre. Maybe, just maybe one day the Criminal Code will be able to impose a limitation period for sexual offences. It would mean an earlier denunciation by the victims, an earlier closure of sad episodes in their lives, and evidence that can be more easily investigated.

If Justice Lalonde was suggesting that a limitation period be imposed in cases of historical sexual abuse, I respectfully disagree.

Mr. Godin testified that he did not believe that an expert on the issue of recent complaint would have helped the matter, because Mr. Marleau could sufficiently explain his reasons for the delayed complaint. I am of the view that it is entirely within Crown counsel's discretion to call the evidence as he or she sees fit. However, in hindsight, expert evidence on the characteristics of victims of historical sexual abuse may have proved useful in this prosecution.

R. v. Father Kenneth John Martin

Mr. Marleau and C-109 had both reported allegations of abuse by Father Martin. The Crown joined both informations in a single indictment, and the matter proceeded to trial on September 17 to 19, 2001. Mr. Godin led evidence pertaining to the allegations against the other alleged perpetrators of Mr. Marleau.

Mr. Godin prepared written submissions on the issue of consent, which were presented to the trial judge. Mr. Godin focused on the abuse of trust in the relationship between Father Martin and Mr. Marleau. Mr. Godin agrees that the issue of consent was not sufficiently explored or canvassed with Mr. Marleau.

On November 9, 2001, Justice Robert Cusson acquitted Father Martin. Justice Cusson stated that the accused:

was in a position of trust vis-à-vis the complainant. That does not place him in a position of authority and, of itself, does not show the accused as having exercised such authority to influence Mr. Marleau into submitting or consenting to the sexual activity against his will.

Justice Cusson noted in his judgment that the acts between Mr. Marleau and Father Martin were "consensual acts held in private, between two individuals who were of consenting age." At the time Father Martin would have been around thirty-five or thirty-six years old and Mr. Marleau would have been around fifteen. Recent amendments to the *Criminal Code* have since raised the age of consent to sixteen. Justice Cusson further noted that with respect to the allegations of C-109, it was feasible that the alleged victim may have misinterpreted the gestures of the

accused and although he accepted the evidence in question he had not been convinced of the guilt of Father Martin to the charge of indecent assault, beyond a reasonable doubt.

R. v. George Sandford Lawrence

On September 29, 2000, defence counsel brought an application to adjourn the trial date for medical reasons. The issue of delay was raised, and the accused waived his right to a trial within a reasonable time as guaranteed by section 11 (b) of the *Charter*. The trial of Mr. Lawrence was held from October 1 to 3, 2001. Mr. Godin led evidence that Mr. Marleau had been sexually abused by Mr. Landry, who introduced Mr. Marleau to Father Lapierre and Mr. Lawrence, both of whom sexually abused him as well. On October 2, after the Crown closed his case, defence counsel brought a motion for dismissal of the case for lack of evidence. The charge of indecent assault was dismissed by Justice Michel Charbonneau in a directed verdict, because the Crown had failed to prove that Mr. Marleau had not consented to the sexual activity. Mr. Godin testified that it did not help his case that he was not able to present the full portrait of Mr. Marleau's allegations. Despite this, Mr. Godin does not believe the testimony of an expert in the matter would have assisted. The trial continued on the remaining charge of gross indecency. On October 5, Mr. Lawrence was acquitted of this charge because the Crown had failed to prove its case beyond a reasonable doubt.

Connections Between Claude Marleau's Alleged Abusers

A significant issue raised by Mr. Marleau's allegations was the link between the alleged perpetrators. Mr. Marleau testified that he was introduced by one alleged perpetrator to another. He characterized his experience in being passed between alleged abusers as, "J'étais une espèce de jouet qu'on passait d'un à l'autre."

According to Mr. Godin, there was a common thread among the alleged perpetrators. Mr. Godin considered charges of conspiracy before the preliminary inquiry, but he felt the evidence was insufficient to support a charge of conspiracy under the *Criminal Code*. The fact that people know each other or introduce people to each other is insufficient to support a criminal charge of conspiracy. It is difficult to establish that there was a "common goal" among the parties.

Mr. Godin did attempt to use the links between the alleged perpetrators to establish that consent was not an issue. However, because the trials were heard separately and before different judges, it was difficult for Mr. Godin to present the links between the alleged abusers of Mr. Marleau.

Appeal Process and Appeal Considerations in Some Prosecutions

Mr. Godin requested that the Crown Law Office consider appealing the decision in *R. v. Lapierre* on September 14, 2001. The Crown Law Office approved the appeal, and a notice of Crown Appeal was filed and a factum prepared.

On November 13, 2001, Mr. Godin requested an appeal of the decision in *R. v. Martin*. The Crown Law Office did not agree with the grounds of appeal he proposed, and the appeal did not proceed.

On October 9, 2001, Mr. Godin filed a further checklist for Crown Attorney Requesting Crown Appeal in the matter of *R. v. Lawrence*, but no appeal was filed.

The appeal in *R. v. Lapierre* was abandoned in March 2003 because “there was no question of law which could properly ground a crown appeal request against the acquittal.” Mr. Godin contacted Mr. Marleau and advised him the matter was not proceeding.

Mr. Godin testified that he did not receive the memoranda written by the lawyers who reviewed the appeal requests, outlining their opinions on the potential for an appeal. He usually received a telephone call advising him whether the case would be appealed. I am not aware of the current protocol for advising Crowns of the status of a requested appeal; however, I am of the view that Crowns should be advised so that victims can in turn be informed.

Related Quebec Criminal Proceedings of R. v. Father Paul Lapierre

As discussed in Chapter 7, some of Mr. Marleau’s allegations were reported to police authorities in Quebec because the incidents were alleged to have occurred in the Montreal area. As a result, criminal prosecutions against two priests of the Diocese of Alexandria-Cornwall, Father Lapierre and Father René Dubé, were held in Montreal. Father Lapierre was convicted and Father Dubé was acquitted.

It is important to look at a few distinctions between the two trials of Father Lapierre, in order to dispel the theory advanced by some that the difference in the results of these cases illustrates that one cannot get justice in Ontario.

On June 8, 2004, Justice Gilles Garneau of the Cour du Québec rendered his judgment in the Father Lapierre matter:

Le Tribunal a écouté très attentivement le plaignant témoigner et les différents repères qu’il a donnés pour se souvenir de l’époque des événements. Également, de tout le sérieux qu’il a mis dans la recherche de ces repères.

Aussi le Tribunal a pris en considération les contradictions faites dans ses déclarations: identité de l’accusé Dubé, oubli de la septième année,

entre autres, mais il les a admises de plein gré et corrigées à la première occasion. Le Tribunal tient compte aussi des fausses informations qu'il a données à une certaine époque.

Le Tribunal, en tenant compte de l'ensemble de la preuve, accepte le témoignage du plaignant comme étant fiable et crédible.

That is, the Court found the evidence of Mr. Marleau to be reliable and credible and convicted Father Lapierre on the charge of gross indecency. On October 1, 2004, he was sentenced to twelve months imprisonment followed by three years probation.

Father Lapierre did not testify in the Quebec proceedings, and according to Mr. Godin this made a difference. Because he did not testify, he could not benefit from the first two parts of the test on acquittals as set out in *R. v. S. (W.D.)*. The Supreme Court recommended the following jury instructions on the issue of credibility as it relates to the principle of reasonable doubt:⁷

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in a reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

By not taking the stand to testify in his trial, Father Lapierre did not benefit from the first two parts of the test enunciated by the Supreme Court because there was no evidence to assess.

In the Father Lapierre proceedings in Quebec, the trial judge accepted the notion that a perpetrator introducing a victim to another perpetrator demonstrated that there appeared to be a ring. Mr. Godin testified that he used the notion of the victim being passed between the accused in support of his theory on grooming.

On September 11, 2006, Justice Lise Côté, Justice François Doyon, and Justice Jacques Dufresne of the Cour d'appel du Québec upheld the finding of guilt and the sentence imposed by Justice Garneau.

7. *R. v. S. (W.D.)*, [1994] 3 S.C.R. 521.

When asked about the distinction between the treatment of his cases in Ontario and in Quebec, Mr. Marleau testified:

En 1983, j'ai fait le serment de toujours honorer la justice et je dois vous dire qu'avant d'accepter de venir ici, j'ai eu énormément de problèmes avec cette question-là.

C'est des jugements qui ont été rendus pas mal à la même époque dans un système ou ... j'avais ... la confiance que l'administration de la justice était la même partout. J'ai plus cette conviction-là.

...

Je ne sais pas quoi vous dire de plus, mais ça a tout au moins ébranlé ma foi dans le système.

That is, Mr. Marleau, a lawyer, participated as a complainant in a number of criminal proceedings in Ontario and one in the province of Quebec. The outcomes of the Ontario matters have shaken his faith in the administration of justice.

Claude Marleau's Views of the Justice System

Claude Marleau was disappointed by his involvement with the criminal justice system. His reported allegations were mostly believed but did not proceed to trial or result in convictions for a number of reasons. In some cases, details of the time and specifics of the offence were not clear, no doubt because of the passage of time, and left the judge with a reasonable doubt. In other cases, issues arose about the age of the complainants and their consent. The Crown at times was not permitted or failed to present his argument on grooming in a manner that would convince the Court that Mr. Marleau had not voluntarily consented to the acts.

Mr. Marleau came to Cornwall with the intent of preventing the continuation of the abuse he had been a victim of in his youth. I hope he is comforted by the fact that some of the issues, problems, and difficulties with the investigations and prosecutions of his case have been examined, which will improve the institutional response to allegations of historical sexual abuse.

R. v. Harvey Joseph Latour

Investigation and Crown Opinion on Charges Regarding Allegations of C-96

C-96 attended the Project Truth office with Claude Marleau on July 31, 1997, and provided a videotaped statement. C-96 alleged that he had been a victim of

historical sexual abuse by Roch Landry and Harvey Joseph Latour. With respect to Mr. Latour, C-96 said that he worked in his restaurant when he was in junior high school, and that the abuse occurred in the basement of the restaurant while he was working.

As mentioned in the previous section, Robert Pelletier was provided with a number of Crown briefs on April 1, 1998, one of which related to these allegations against Mr. Latour.

On May 7, Mr. Pelletier provided Detective Inspector Tim Smith with a memorandum setting out his opinion on charges against several alleged perpetrators, including Mr. Latour.

Mr. Pelletier stated that the offence dates placed Mr. Latour's alleged offences "both inside and outside the legal ages of consent" for C-96 and further noted:

... there are sufficient details provided of conduct amounting to charges contemplated clearly at a time when the victim was not of legal consenting age. In the circumstances, I would recommend this matter proceeds as presently contemplated.

Mr. Latour was charged on July 9, 1998, with one count of indecent assault against C-96.

Involvement of Murray MacDonald in Disclosure

Don Johnson represented Mr. Latour. On July 20, 1998, Mr. Johnson requested disclosure from the local Crown attorney, Murray MacDonald. At the time, no outside Crown had been assigned to the matter. Mr. MacDonald forwarded the letter to Mr. Pelletier and asked that he "please send this [letter] on to the Crown ultimately assigned to this file."

On August 4 and August 26, 1998, Mr. Johnson wrote to Mr. MacDonald advising he had not yet received disclosure in this matter. Mr. MacDonald testified that as soon as he received these letters, he passed them on to Mr. Pelletier's office. Because of the restrictions on Mr. MacDonald's office, the Crowns in that office could not respond directly to these requests. As I have found before, there should have been a person in the Cornwall Crown Attorney's Office, other than Mr. MacDonald, assigned to deal with these types of issues. This once again is an example of some of the difficulties that arose as a result of not having a dedicated Crown counsel assigned to the Project Truth prosecutions, which caused delays that might have had a critical impact on the prosecution of this case.

As discussed in the previous section, Alain Godin was assigned to a number of Project Truth prosecutions in September 1998, including the prosecution of Mr. Latour.

Preliminary Inquiry

On May 19, 1999, Justice Gilles Renaud heard the preliminary inquiry in *R. v. Harvey Joseph Latour* and determined there was sufficient evidence to commit Mr. Latour to stand trial. Mr. Godin prepared an indictment with one count of indecent assault on a male, dated July 29, 1999.

The *R. v. Latour* matter proceeded to trial on June 26, 2000, before Justice Richard Byers. In rendering his decision on June 27, Justice Byers noted:

So, did Mr. Latour molest [C-96] 35 years ago in that basement?
Well, I think he did. I am pretty sure he did.

I am troubled by two things: [C-96]’s use of the word “flashback” and the matter of the tattoo ... That word [flashback] used in historical sexual cases raises a bit of a red flag. No effort was made to explain what [C-96] meant when he used that word. By itself, I might be inclined to ignore it. But, [C-96] thought his perpetrator had a tattoo, an anchor, on his arm. Mr. Latour has no tattoo. Plainly, [C-96] is wrong on this point or he is right, and has identified the wrong man.

I do not hold [C-96] to the standard of perfection. He was a young man at the time and it happened many years ago. But, in the context of this case, I think that the tattoo is not an insignificant detail that can be explained away by the young age of the complainant or the simple passage of time.

As I said, this case is 35 years old. It requires me to assess the credibility and historical memory of a young man, on the one side, and a reformed alcoholic, on the other. In law, credibility means truthfulness and it means reliability. I am satisfied beyond a reasonable doubt that [C-96] was a honest and truthful witness, but I must also be satisfied beyond a reasonable doubt that his evidence is reliable and is dependable, that he got it right, not just parts of it right, but all of the important parts, including the part about identity.

This is not a civil case. Probably guilty, is not good enough. It is a criminal case. Proof beyond a reasonable doubt is the required standard. In my view, the tattoo raises that doubt. [C-96] just might have got identity wrong. I don’t think he did, but he might have. The law under these circumstances, therefore requires that I find this accused not guilty.

Justice Byers found Mr. Latour not guilty because the Crown had not proved all the elements of the offence beyond a reasonable doubt, mainly the issue of identification.

Difficulties Prosecuting Historical Abuse Cases

This case illustrates some of the difficulties that prosecutors have to overcome when dealing with historical cases of sexual abuse. Justice Byers said that C-96 was probably abused by Mr. Latour, but that the test for a conviction, beyond a reasonable doubt, was not met.

R. v. Marcel Lalonde

Cornwall Police Service Investigation

As discussed in Chapter 6, dealing with the institutional response of the Cornwall Police Service, Marcel Lalonde was an elementary school teacher with the Stormont, Dundas & Glengarry County Roman Catholic Separate School Board from 1969 until he was relieved from his teaching duties on January 9, 1997. He was first investigated for sexual abuse in the late 1980s by the Cornwall Police Service (CPS). On January 9, 1989, Constable Kevin Malloy of the CPS spoke with C-60, who alleged he had been sexually abused by Mr. Lalonde but refused to involve himself in the process. On January 10, Constable Malloy interviewed C-57, who alleged that when he was sixteen years old Mr. Lalonde frequently provided him with alcohol and sexually abused him on a couple of occasions. C-57 also said that Mr. Lalonde wanted to take nude pictures of him and showed him a photo album with photos of nude males.

Crown Don Johnson Provides an Opinion

Constable Malloy sought legal advice and direction from Crown Attorney Don Johnson. Constable Malloy testified that he did not at the time have reasonable and probable grounds to charge Mr. Lalonde but he wanted confirmation from the Crown.

Mr. Johnson had no recollection of discussing the Marcel Lalonde investigation with Constable Malloy in 1989.

According to Constable Malloy, he attended the Crown Attorney's Office but did not take notes of the conversation. He said taking notes was not permitted due to solicitor-client privilege, and officers had to remember the advice provided by the Crown. Constable Malloy testified that today notes are taken during meetings and then are reviewed for disclosure purposes, but that in 1989 officers did not take notes of meetings with the Crown.

Mr. Johnson did not recall ever telling police officers that they were not permitted to take notes during a meeting. I am not aware of any policy from the Ministry of the Attorney General that would prevent a police officer from taking notes during a meeting with Crown counsel. All of the policies dealing with the relationship between police and Crown counsel specifically remind Crowns that their advice is likely to be recorded in the police officer's notebook. The first policy on the relationship between the Crown and police was adopted on August 5, 1997. I am of the view that it is unlikely a policy against note taking existed even before the written policies were put in place.

Constable Malloy testified that he had a second meeting with Mr. Johnson after the investigation was more complete to discuss the issue of consent and the possibility of seeking a search warrant. According to Constable Malloy, the Crown said he did not have the grounds to obtain a warrant and that consent would be an issue. Mr. Johnson did not recall this meeting with Constable Malloy either.

According to Constable Malloy, Mr. Johnson did not recommend that he interview Mr. Lalonde and did not suggest that he contact the Children's Aid Society or the school board to report the allegations.

Constable Malloy testified that when he attended Mr. Johnson's office he had all the victim statements and asked Mr. Johnson to review them. Based on his conversation with the Crown attorney, Constable Malloy decided not to proceed with charges.

This is another example of the Ministry of the Attorney General's failure to ensure that notes and records were properly kept and stored, that opinions provided to police were properly recorded, and that files were opened with respect to allegations of sexual abuse.

As discussed in Chapter 6, on June 22, 1989, Constable Malloy placed the file in abeyance in the hopes that more information would come forward in the future that would allow the investigation to proceed. My concerns about Constable Malloy's actions in this case were discussed in that chapter.

David Silmsner's Allegations of Abuse by Marcel Lalonde and Subsequent Investigation

As discussed in previous chapters, in August 1994 the Ontario Provincial Police (OPP), the CPS, and the Children's Aid Society were aware of David Silmsner's allegations of abuse by his former teacher at Bishop Macdonell School, Mr. Lalonde. However, the Ministry of the Attorney General had no involvement in or around this time since CPS Staff Sergeant Luc Brunet had determined that "without cooperation of the victim, no further action can be taken."

In late 1996 and early 1997, a number of other complainants came forward alleging they were abused by Mr. Lalonde. These complaints and subsequent

investigations are covered in detail in Chapter 6 and in Chapter 7, dealing with the institutional response of the OPP.

Mr. Lalonde was arrested by the OPP and charged with one count of indecent assault on a male on January 7, 1997, with respect to the allegation of C-68. He was arrested again on April 29 by officers of the CPS and charged with eight counts of indecent assault on a male, seven counts of gross indecency, and one count of sexual assault with regard to the allegations of C-45, C-8, C-58, Kevin Upper, C-66, and another person. A search warrant was obtained and executed on the day of Mr. Lalonde's arrest.

Assignment of the Prosecution

OPP Detective Constable Don Genier's notes indicate that on April 1, 1997, he met with Assistant Crown Attorney Guy Simard, who explained there was a conflict of interest with the Cornwall Crown Attorney's Office and that the case would be reassigned. The prosecution of Mr. Lalonde was referred to the Brockville Crown Attorney's Office in May 1997. Brockville Crown Attorney Curt Flanagan assigned Assistant Crown Attorney Claudette Wilhelm to the case.

The preliminary inquiry in the *R. v. Lalonde* matter was held on January 13 to 15, 1998, before Justice Fontana. Mr. Lalonde was committed to stand trial on all seventeen counts.

Constable Perry Dunlop's Involvement in the Prosecution

On January 15, 1998, Constable Perry Dunlop testified for the defence in the preliminary inquiry. It became evident that he had not disclosed all documents in his possession, including those pertaining to C-8.

On April 29, 1998, Detective Constable Genier spoke with Ms Wilhelm, who requested that "all notes from Cst. Dunlop ... be disclosed pertaining to Lalonde investigation."

The trial of Mr. Lalonde was originally scheduled for February 1999. It was adjourned to October 4, 1999. In October, the matter was further adjourned to September 11, 2000, due to disclosure issues.

On October 1, 1999, Detective Constable Genier met with the Crown and was provided with notes from Constable Dunlop regarding C-8, which CPS Constable René Desrosiers had obtained the day before. As I have indicated in Chapter 6, Constable Desrosiers also learned that a CPS investigation of Mr. Lalonde had taken place in 1989, and he understood that this material was also subject to disclosure.

In the afternoon of October 4, Detective Constable Genier, Ms Wilhelm, Constable Desrosiers, CPS Staff Sergeant Rick Carter and CPS Staff Sergeant

Garry Derochie met and discussed the Dunlop notes in relation to the Marcel Lalonde matter. Ms Wilhelm said she had no confidence that the Crown had received all the documents from Constable Dunlop. She told Staff Sergeant Derochie that she could not say to the defence with any certainty that full disclosure had been made.

On October 5, Detective Inspector Hall met with Detective Constable Genier and Ms Wilhelm on the Marcel Lalonde matter. Detective Inspector Hall called Shelley Hallett and asked her to speak with Ms Wilhelm about the Marcel Lalonde matter.

By way of letter dated October 5, 1999, the Crown requested that Detective Inspector Hall again attempt to obtain full disclosure from Constable Dunlop. Ms Wilhelm was also concerned about Constable Dunlop continuing to contact witnesses and requested that Detective Inspector Hall ask him whether he spoke to complainants and whether he did so in an official capacity as a police officer. The Crown advised that the defence position was that he was contaminating the prosecution of the case.

On October 13, Detective Inspector Hall met with Marc Garson, a Crown from London, Ontario, to discuss the issue of Constable Dunlop having committed perjury.

On November 19, 1999, Mr. Garson issued a legal opinion on three issues arising from the meeting. The letter was addressed to Staff Sergeant Derochie and copied to Ms Wilhelm and regional Crown James Stewart. The issues Mr. Garson considered are:

Issue One: What are the requirements of the Cornwall Police Service at law to ensure that full disclosure has been made?

Issue Two: What is the Crown's responsibility in this matter?

Issue Three: What are the next steps to be taken?

With respect to the next steps to be taken, Mr. Garson suggested that a meeting be held with Constable Dunlop and that written confirmations be kept of any and all requests made for information from Constable Dunlop. In addition, he recommended:

Should any further disclosure be forthcoming from Constable Dunlop and should this disclosure be material or relevant to other persons charged with offences, we recommend that you ensure such additional disclosure is provided to the appropriate Crown counsel.

Upon receiving Mr. Garson's opinion, the CPS, in consultation with Assistant Crown Attorney Wilhelm, prepared a comprehensive order to Constable Dunlop.

The content of this order is further discussed in Chapter 6, on the institutional response of the Cornwall Police Service. As a result, Constable Dunlop provided a 110-page will-state and pages of notes. Detective Constable Genier and Constable Desrosiers reviewed these materials for disclosure purposes in the Lalonde matter. This issue has been examined in Chapters 6 and 7.

R. v. Lalonde Trial

The trial in the Marcel Lalonde matter was held in September 2000. Mr. Dunlop failed to attend as a witness. On September 12, one of the complainants in the Lalonde matter, C-8, testified under oath that some of his allegations were not true. In particular, he admitted that the allegation that he was abused by Mr. Lalonde during a school trip to Toronto was not true. C-8 told the Court that Constable Dunlop had told him that if something happened at the school or on a school activity, he could sue the school board.

On November 17, 2000, notwithstanding the recantation of C-8, Justice Monique Métivier found Mr. Lalonde guilty on six counts relating to C-45, C-8, another victim, and C-66. The submissions on sentencing were heard on April 12, 2001. On May 3, 2001, Mr. Lalonde was sentenced to a term of incarceration of two years less a day.

R. v. Father Charles MacDonald: New Charges Laid and Trial

Preliminary Inquiry Completed and Father Charles MacDonald Committed to Trial

As previously discussed, the 1993 and 1994 investigations by the Cornwall Police Service (CPS) and the Ontario Provincial Police (OPP), respectively, did not lead to charges being laid against Father Charles MacDonald. In 1996 charges were laid in respect of allegations of historical sexual abuse made by three victims: David Silmser, John MacDonald, and C-3. The preliminary inquiry began in February 1997 and was adjourned in part because of new allegations that surfaced against Father MacDonald. During this time, Project Truth was commenced. The preliminary inquiry resumed on September 8, 1997, and was completed on September 11. On October 24, Father MacDonald was committed to stand trial on all charges.

New Charges Laid—Robert Pelletier Reviews New Crown Brief

As discussed in Chapter 7, on the institutional response of the OPP, Project Truth investigated additional allegations against Father MacDonald, and by the end of October, additional charges were being contemplated by the OPP. Detective

Constable Joe Dupuis had several contacts with Crown Attorney Robert Pelletier about this matter during the fall of 1997. However, most of the direction he received was from Detective Inspector Pat Hall. According to Detective Constable Dupuis, the protocol was that Mr. Pelletier would deal with Detective Inspector Hall who would in turn instruct him.

Mr. Pelletier was provided with a brief on January 6, 1998, and reviewed it to determine whether new charges should be laid. He recommended that a number of charges be laid against Father MacDonald. Detective Inspector Smith's notes of a call with Mr. Pelletier on January 21 include a comment about joining the charges: "charges can be transferred later hopefully to marry up with present charges."

Mr. Pelletier testified that it was always his intention to conduct one trial with all of the complainants. However he did not discuss this with any of the three original complainants. He did not know whether they were made aware of his intentions with respect to joining the charges.

Mr. Pelletier did not recall preparing an opinion letter regarding the new charges. He testified that he was surprised that he would recommend eight charges be laid in respect of five complainants without putting it in writing. He did not believe he would simply tell the officers to go ahead and lay charges, since the relevant *Criminal Code* sections had changed over the years in question. However, no letter was written.

Detective Constable Dupuis swore an information with the new charges on January 26, 1998. Father MacDonald was charged with one count of indecent assault against each of Kevin Upper and C-5, two counts of indecent assault against C-8, one count of sexual assault and one count of gross indecency against Robert Renshaw, and one count of indecent assault and one count of gross indecency against C-4.

Communication With David Silmsers Lawyer

On or around February 25, 1998, Mr. Pelletier received a letter from Alain Robichaud, who was the new lawyer representing David Silmsers, inquiring into the status of the matter. In particular, Mr. Robichaud asked if the Crown intended to join the new charges against Father MacDonald with those presently before the courts. It thus appears that at this time, the Crown's intention to join the charges had not been communicated to the initial three complainants, Mr. Silmsers, John MacDonald, and C-3. Mr. Pelletier responded in a letter dated February 27. He summarized the state of affairs for the two sets of charges and discussed the possibility of a joinder of all counts:

There is of course the possibility of a motion for joinder of all counts enabling the Crown to proceed to trial with regards to all fifteen charges

and eight victims. That would no doubt improve the merits of the case and allow for similar fact evidence, however, this would necessarily result in some delays in conducting the trials on the first series of charges. These are among the matters that will be discussed at the judicial pre-trial on the original charges and presumably as well at a judicial pre-trial in the Provincial Division on the new set of charges.

As will be discussed, the issue of delay was not raised during any pre-trial appearances.

Delays in Scheduling Judicial Pre-Trial

There was some difficulty in scheduling the judicial pre-trial. On April 1, 1998, Mr. Pelletier wrote to Mary Simpson, the scheduling clerk and Chief Justice's assistant, copied to defence counsel representing Father MacDonald, Michael Neville. The letter outlined a summary of the issues to be discussed, including joining the charges and the potential resulting delays.

On November 20, 1998, Mr. Pelletier wrote a letter to Mr. Neville, telling him that as a result of scheduling difficulties that had arisen in the General Division pre-trial list earlier in the year, the judicial pre-trial could not be conducted as earlier planned. Mr. Pelletier noted his intention to have all counts heard together and his concern that a judicial pre-trial be held soon: "My principal concern is ensuring that a judicial pre-trial is conducted as quickly as possible, particularly given the direct instructions of the Justice presiding at the last assignment court."

Mr. Pelletier believed that his intentions about joining the charges were clear in November 1998. He was aware that the preliminary inquiry on the second set of charges was scheduled for March 1999. He was concerned about the delay, as was the Justice presiding at the Assignment Court.

January 1999 Adjournment: No Waiver of Section 11(b) Rights

Following the pre-trial conference with Justice Robert Desmarais, Mr. Pelletier received a letter from defence counsel on January 19, 1999. Mr. Neville said he could not attend for the next appearance. He understood that because of the upcoming preliminary inquiry on the new charges in March, Mr. Pelletier would ask that the present indictment be adjourned to an Assignment Court sometime after March 1999. Mr. Neville stated that the adjournment was "not to be taken as a waiver of any rights that Father MacDonald may have under s. 11(b) of the *Charter*," which provides that every accused has a right to a trial within a reasonable time. Mr. Pelletier testified that he understood at this point that there would be no waiver of Father MacDonald's rights under section 11(b).

The adjournment hearing was heard on January 21, 1999, before Justice Jean Forget. The agent appearing on behalf of Mr. Neville stated that he was instructed not to waive Father MacDonald's section 11(b) *Charter* rights on the record. The matter was adjourned to Assignment Court on May 12, 1999, pending the completion of the preliminary inquiry on the other charges. Therefore the delay proceeding to trial on the first set of charges could affect Father MacDonald's right to a trial within a reasonable time.

Mr. Pelletier testified that he could not recall whether there was a discussion about delay at the pre-trial on the first set of charges, which was conducted before Justice Desmarais. He does not recall there being any request at the pre-trial that the defendant waive his rights under section 11(b).

The Inquiry heard some evidence that there was an earlier discussion between Crown Pelletier and defence counsel about a waiver of Father MacDonald's section 11(b) rights in the context of having the charges tried together in one trial. Detective Constable Dupuis testified that he recalled a chance meeting in an Ottawa courthouse hallway during which there was a short discussion between Mr. Pelletier and Mr. Neville about consolidating the two indictments in the Father MacDonald case. Mr. Pelletier advised Mr. Neville that there were further charges coming and asked if he wished to have one trial or two. Mr. Neville said one. They then discussed section 11(b), and Mr. Neville said he would waive it. Detective Constable Dupuis did not specifically recall when this conversation occurred but thought it was before the swearing of the new information on January 26, 1998. The officer did not record anything about this conversation in his notes.

Detective Constable Dupuis did not discuss this conversation with any Crown attorney until the stay application was brought in 2002, at which time he brought it up with Crown Lorne McConnery and possibly with Detective Inspector Hall.

Detective Constable Dupuis testified that the conversation did not affect the way that he conducted the investigation from that point in time. He did not, for example, think that delay was not an issue to be concerned about.

Although Mr. Pelletier did recall a meeting with Mr. McConnery sometime later, during which he wanted to know whether Mr. Pelletier was aware of any discussions between counsel bearing on the issue of delay and possible waiver of section 11(b), Mr. Pelletier did not recall having this type of discussion with Mr. Neville in an Ottawa courthouse hallway. According to Mr. Pelletier, although the issue would have come up in their discussions about the consequences of doing both trials together, he did not recall any request that Mr. Neville waive his client's 11(b) rights at the pre-trial, nor was there ever any such waiver.

Mr. Pelletier testified that if Mr. Neville had waived a constitutional right in a discussion, he would without a doubt have sent him a letter confirming the

waiver. There are no documents indicating a waiver by Mr. Neville. I am of the view that even if such a discussion occurred around that time, it was not confirmed in writing. If I were to accept it at face value it would not in itself constitute a waiver of Father MacDonald's section 11(b) rights under the *Charter*.

Preliminary Inquiry on Second Set of Charges—March 1999

The preliminary inquiry on the second set of charges was held in March 1999. Father MacDonald was committed to stand trial on these charges on May 3, 1999. Mr. Pelletier prepared an eight-count indictment on May 5.

Robert Pelletier in a Conflict

Shortly after the preliminary inquiry, Mr. Pelletier determined that he was in a conflict and requested that the file be assigned to a new Crown. It became clear to Mr. Pelletier that certain individuals in the community were convinced that Murray MacDonald might be part of a group alleged to be undertaking a campaign to obstruct justice and to prevent charges from being laid and cases going to court. Mr. Pelletier testified that since the trials were "looming" and Murray MacDonald might be a witness, "it became abundantly clear to me that I could not go on as prosecutor."

According to Mr. Pelletier, this issue was different from the one he identified in his memo to Peter Griffiths on April 2, 1997. In 1997, Mr. Pelletier was concerned about being involved in any investigation and prosecution of allegations of conspiracy. The issue that arose in spring 1999 was that Mr. MacDonald might have to testify, and Mr. Pelletier could not cross-examine a colleague and good friend.

At a meeting on April 9, 1999, between Mr. Pelletier, James Stewart, Director of Crown Operations, Eastern Region, John Corelli, the Director of Special Investigations, and OPP Detective Inspector Hall, it was decided that Shelley Hallett would be assigned to prosecute Father MacDonald.

File Transferred to Shelley Hallett

Mr. Pelletier met with Ms Hallett on one or two occasions to transfer the file and brief her about the case.

Ms Hallett received a letter from Mr. Pelletier dated June 25, 1999, advising that the next judicial pre-trial was scheduled for September 7, 1999, and he would make himself available "in order to ensure that the transition is as seamless as possible." He suggested meeting at the end of August once she had an opportunity to review the materials. According to Ms Hallett, Mr. Pelletier was

going to attend the pre-trial with her because he knew more about the issues and the history of the case.

When Ms Hallett was assigned to take over this file, no trial date had been set for either set of charges. The first set of charges was approximately three years old and the second set of charges approximately one and a half years old. Mr. Pelletier had held back the first set of charges to allow the second set to proceed to the preliminary inquiry. There was clearly some delay caused by this decision. Ms Hallett said when she took over the file, she was not aware of any other significant delays in the proceedings.

Robert Pelletier and Shelley Hallett Prepare for Pre-Trial

On August 27, 1999, Mr. Pelletier and Ms Hallett had a meeting to prepare for the upcoming judicial pre-trial on September 7. A memorandum was prepared by Nadia Thomas, an articling student with the Crown Law Office—Criminal, on August 31. It lists some of the issues discussed during the meeting including matters to be determined at the pre-trial conference, potential defence motions, order of witnesses to be called, evidence the Crown needs to obtain, potential expert evidence to be called, potential judges, and things still to be done.

According to the memo, one of the issues to be determined at the pre-trial conference was whether to join the indictments. Mr. Pelletier testified that at the time the file was transferred his intention was to conduct one trial, but he was no longer the prosecutor and this may still have been a question for Ms Hallett. Indeed, she had Ms Thomas collect case law to assist the Crown in determining whether to proceed on one indictment or two. Ms Thomas prepared a memo for Ms Hallett on this topic on August 30. Ms Hallett testified that she wanted some information about this issue because she was not sure she had had any experience with joining indictments:

I believe that my main concern was whether or not the joining of these two indictments was going to create any prejudice in terms of the defence of Charles MacDonald and ... in turn, whether or not that prejudice might result in some successful ... challenge to the charges or a stay or a finding of not guilty.

After considering all the issues with respect to joining the indictments, Ms Hallett was of the view that the charges should be joined.

The potential defence motions discussed during the meeting included abuse of process, pre-charge delay, lost evidence, and lack of trial fairness due to publicity. What does not appear to have been discussed is post-charge delay. Ms Hallett did not believe post-charge delay was considered during this meeting.

Judicial Pre-Trial—September 7, 1999

Mr. Pelletier attended the pre-trial on September 7, 1999, with Ms Hallett to ensure a transfer of information from the preliminary inquiries. Mr. Pelletier testified this was going to be the end of his involvement in the prosecution.

There was discussion at the pre-trial of a potential severance motion.⁸ The division was not necessarily going to be between the first and second sets of charges but rather on the basis of distinguishing features between the eight complainants. Ms Hallett's concern at that point was that they get sufficient notice of any pre-trial motions so they could prepare properly. There was no commitment by Mr. Neville, defence counsel, at that time to bring a severance motion.

Although Ms Hallett believed they had advised defence counsel by this point that they were going to proceed by joining the indictments, it appears this issue was not discussed in any detail during the pre-trial conference.

Another issue that was not discussed was delay and section 11(b) of the *Charter*. Ms Hallett acknowledged that delay should have been discussed at this time.

As noted above, a significant amount of time had already passed since charges were laid in this case. I would expect that the Crown would by this time at least consider the issue of delay and the risk that the defence would bring a section 11(b) application to have the charges stayed for unreasonable delay. As will be discussed further below, this did happen and the charges were stayed, a result which may have been avoided had the Crown considered the issue of delay and how to deal with it proactively rather than simply reactively.

Joinder of Charges

Once a person is committed to stand trial, the Crown has the discretion to proceed with one or more than one indictment. Ms Hallett elected to join all charges in a single indictment. Throughout the prosecution, Mr. Pelletier felt strongly that the charges should be heard together and it was his "duty" to join the indictments: "As soon as I found out there were going to be five other complainants, my mind was made up to conduct one trial with eight complainants."

Detective Inspector Hall testified that he and his team understood that, to the extent possible, if the Crown had multiple charges against an accused the Crown would want them joined together because it would increase the likelihood of convictions. Unlike Detective Inspector Hall, Detective Constable Dupuis did not know what the Crown's thought process was on this issue. He testified that nobody told him that if he laid additional charges, the Crown would want to join them together with the first charges.

8. This is a motion to separate the charges and have them prosecuted individually rather than together.

Mr. Pelletier testified that if he had been required to conduct two trials, he would have called the three complainants in the first case, and presented the other five as similar fact witnesses. A similar exercise would be repeated in the second trial. The difficulty from the Crown's perspective is that every time witnesses testify, they give a different version of events they recall:

So as a prosecutor one of my concerns is not exposing complainants to more testimony than is necessary. They're often interviewed three times, they testify at the preliminary inquiry ... and if they have to testify at two trials, then the defence has five or six versions with which to work.

Mr. Pelletier agreed this was an issue in this prosecution where the complainants had given more than one statement, some had been examined for discovery, and there were some discrepancies in the different statements.

Mr. Pelletier weighed the pros and cons of joining the indictments in terms of the issue of delay. He testified that it was a calculated risk he was taking and one that ultimately favoured the prosecution:

... had the case proceeded to trial sometime in '99 or 2000, I didn't think delay was going to be a problem, but obviously there was a risk. And I calculated that risk, assessed the risk and chose to proceed with what I felt would be a much stronger case with eight complainants as opposed to three in one case and five in the other.

During his involvement in the Father MacDonald prosecution he did not at any point become concerned about the possibility of a successful 11(b) application. He explained that the state of the law at the time was such that time requirements inherent in a case were a significant consideration in respect of an 11(b) application. The time requirements in this case were significant because of the way the case had developed: "I felt that the Crown was on a very solid footing on delay, at least up until the summer of '99."

In his testimony at the Inquiry, Carson Chisholm, Constable Perry Dunlop's brother-in-law, spoke about a conversation he allegedly had with Mr. Pelletier during which Mr. Chisholm said, "Charlie is going to walk under Askov,"⁹ and Mr. Pelletier sneered at him, "You're delusional." Mr. Pelletier testified he did not recall this conversation and that he would not tell a member of the public they were delusional.

9. *R. v. Askov*, [1990] 2 S.C.R. 1199, is a Supreme Court of Canada decision that set out parameters for trial within a reasonable time.

As discussed above, Ms Hallett asked for some research on the issue of joining indictments, and she agreed the charges should be joined. Ms Hallett signed the joint indictment on September 10, 1999. Around this time, a six-week trial was scheduled to begin on May 1, 2000.

I am of the view that the Crown could have proceeded separately with the indictments. This may have prevented a stay of proceedings on the first set of charges. However, I do not believe that at the time either Crown could have predicted how events would unfold, which I will now discuss in more detail. I agree with Mr. Pelletier that there was a risk with joining the charges, but it was a calculated risk.

Pre-Trial Conference—October 22, 1999

On October 22, 1999, there was a follow-up pre-trial with Justice Desmarais attended by Ms Hallett, Mr. Neville, and Detective Constable Dupuis. Ms Hallett took notes of the meeting. It does not appear that the issue of delay was discussed at this pre-trial conference either. I am of the view that both Robert Pelletier and Shelley Hallett should have been more alert to issues surrounding the delays in this prosecution and should have addressed it with the pre-trial judge.

Order of Production to Constable Perry Dunlop on January 10, 2000

In the fall of 1999, a related prosecution was proceeding against Marcel Lalonde, a schoolteacher charged with similar offences as Father MacDonald and with some of the same complainants. Claudette Wilhelm, the Crown involved in the Marcel Lalonde prosecution, was concerned that Constable Dunlop might be in possession of relevant evidence that should be disclosed. She was assisted with the preparation of an extensive written order with respect to disclosure and ongoing disclosure requirements.

Ms Hallett was aware of the existence of this order, although she was not aware of the details or discussions regarding the drafting of the order. She was not asked to provide any input into the order but did receive a copy of it.

Ms Hallett received disclosure of Constable Dunlop's materials following this order.

C-2's Allegations

As discussed in Chapter 7, the OPP became aware of another alleged victim of Father MacDonald during a meeting with Constable Dunlop on January 17, 2000. A statement was taken from C-2 on January 26. Project Truth officers advised Ms Hallett of C-2's allegations against Father MacDonald shortly after they learned of them.

Ms Hallett received two further volumes of the Father MacDonald brief, one of which dealt primarily with C-2's allegations, on March 23, 2000. On March 30, Ms Hallett wrote a letter to Detective Inspector Hall providing her opinion with respect to C-2's allegations. Ms Hallett testified that she provided an opinion within the week given the urgency of the opinion. Ms Hallett noted that although the first allegation by C-2 was unusual, there had been other "bizarre allegations" made by other complaints against Father MacDonald. The second allegation, she noted, bore some resemblance to the allegations of two other complainants. Ms Hallett recommended that four counts be laid against Father MacDonald in respect of C-2's allegations.

Ms Hallett testified that she was concerned about how these new counts might affect the outstanding Father MacDonald prosecution. She advised defence counsel about this new complainant and the new charges that would be laid in a letter dated April 6, 2000.

This was the first notice the defence received of the new alleged victim. In the letter, Ms Hallett set out various options for dealing with these new charges: including them on the existing indictment; seeking an adjournment of the May 1, 2000, trial date to allow for an expedited preliminary inquiry on the charges, then consenting to their inclusion on the current indictment; or having the Crown proceed separately on the charges. Ms Hallett testified that she outlined some of these options in part because of her concern about possible delay.

Given that the trial was scheduled to begin on May 1, Ms Hallett acknowledged that she expected the defence might request an adjournment, although not necessarily on the basis of these additional counts. Constable Dunlop had disclosed new documents pursuant to the January 10, 2000, production order and he was being criminally investigated for perjury. Ms Hallett testified that the perjury investigation had "a significant impact on the Charles MacDonald trial since Constable Dunlop had identified so many of the original complainants on that matter."

Detective Inspector Hall testified that he thought the principal reason for the adjournment of the Father MacDonald matter was the laying of additional charges with respect to C-2's allegations. Detective Inspector Hall said that if the police had heard about C-2's allegations in 1998, when C-2 disclosed them to Constable Dunlop, Project Truth would have investigated them, and if viable, those charges would have been laid in 1998 rather than 2000. This could have resulted in two years less delay. In fact, Detective Inspector Hall noted on April 16, 2000, "[G]ave my opinion on MacDonald trial. Should go ahead or at least put off for a short period of time only." He did acknowledge that without the new allegations by C-2, other problems, such as the disclosure by Constable Dunlop, might have led to an adjournment. Detective Inspector Hall agreed that neither he nor Ms Hallett could do anything about those things.

I disagree with Detective Inspector Hall that an earlier disclosure of the C-2 allegation could have prevented a two-year delay. In fact, after the adjournment of the original trial date, a new date was set in early 2001. The additional delay was as a result of other circumstances, which are discussed below.

With regard to Ms Hallett providing an opinion about whether charges should be laid in respect of C-2's allegations, Crown counsel should not be providing opinions on matters that they are currently prosecuting. As was indicated in the 1997 Policy P-1, "Police—Relationship with Crown Counsel," "a Crown counsel who gives advice to the police is a potential witness. If charges are laid, Crown counsel may be subpoenaed to testify on the trial proper, the voir dire determining the admissibility of evidence, or a Charter motion." Although the opinion never became an issue, Ms Hallett should have been more careful and not risked any further delays in an otherwise problematic prosecution. Once again, the assignment of a dedicated Crown to provide advice and opinions to the police may have been useful throughout the entire Project Truth investigation.

On April 10, 2000, Detective Constable Dupuis swore an information containing four charges regarding C-2's allegations against Father MacDonald. As will be discussed below, Lorne McConnery later withdrew these charges.

Adjournment of Trial

Defence counsel agreed to have the new counts added to the existing indictment following an expedited preliminary inquiry. In light of these events, Ms Hallett wrote to defence counsel on April 12, 2000, about bringing the Father MacDonald matter to Assignment Court on April 18:

If this matter cannot proceed on May 1 due to new material coming to light which was unanticipated by either the defence or the Crown, then the Court should be advised as soon as possible so that the scheduled trial time can be re-allocated to another case. I trust that the defence will join the Crown in seeking an adjournment on this basis.

Ms Hallett stated that she was prepared to attend in any available Ontario court to deal with the preliminary inquiry. She also canvassed some alternative options, including arranging for a discovery at a special examiner's office. Ms Hallett was providing these options to prevent any delay in getting to trial. She noted in the letter that there was time in the fall for the trial and asked Mr. Neville to provide his availability. She also said that if the expedited preliminary inquiry could not take place over the summer, the Crown was prepared to proceed separately on the counts to allow the trial on the existing counts to take place as soon as possible.

Murray MacDonald was copied on this letter. According to Ms Hallett, he was copied because they were dealing with dates and allocations of court facilities and it was a courtesy to advise him. She was aware of the conflict but was not aware that it would preclude him from being informed of the allocation of court resources in the trials. She said she had to deal with him, for example, in terms of space at the courthouse. As I have indicated previously, in my opinion in situations where it was necessary to communicate with the Cornwall Crown Attorney's Office, an individual other than Mr. MacDonald should have been designated to deal with these issues. For the sake of public perception, Mr. MacDonald should not have been receiving any correspondence or material related to Project Truth matters.

The matter was spoken to on April 18, 2000, before Justice Robert Desmarais. Ms Hallett advised the Court of three things. The first was the identification of a new complainant in the Father MacDonald matter. She outlined the options she had proposed to Mr. Neville to deal with the new charges.

Second, she advised the Court that on April 5, 2000, Project Truth investigators had become aware of banker's boxes of materials that had been brought to the Cornwall Police Service by Constable Dunlop. Ms Hallett told the Court that an OPP officer had reviewed the materials and there was nothing relevant to the Father MacDonald case that had not already been disclosed. However, she intended to review the contents of the boxes herself. She also said that on April 10, 2000, Mr. Dunlop had provided a will-state with four volumes of appendices. She said that she had received a copy of those materials on April 17.

The third matter concerned the perjury investigation of Constable Dunlop, which she requested be heard *in camera*. Ms Hallett testified that she felt it was important this be done *in camera* because it involved a criminal investigation that could have severe repercussions for the person being investigated. She felt it was best to await the outcome of the investigation before the matter was publicly brought to light.

The Crown said that although she would be prepared to proceed to trial on May 1, she felt that in light of the ongoing investigation and new materials the correct position to present to the Court was a joint request for an adjournment. Ms Hallett proposed coming back and reporting, perhaps sometime in June, on the progress to date in terms of sorting out the new material. Although she agreed the case had become more complex, she did not think it was as "unwieldy" as characterized by defence counsel in his submissions.

The Judge made the following comments about the trial scheduling:

... it is unrealistic to anticipate that any of the parties would be prepared to proceed to trial in May of this year, that is to say next month. It's also pure speculation in my view that the parties would be available for trial some time in the fall, there being too many unknowns at this present

time or “imponderables” as indicated by counsel on behalf of the accused. There will be some time required in order to assess the various disclosures and indeed, the Crown will need time as well to determine the relevancy of additional information received by her, prior to any disclosure being made to the defence counsel.

The pre-trial was adjourned to August 23, 2000, at which time it was expected counsel could indicate their state of readiness for trial and that a trial date would be set. In my view, this was a missed opportunity to address the issue of delay on the record. It may have been beneficial for the Crown to know what the defence position was at that time.

Shelley Hallett Reports to James Stewart

Although it was not raised during the court appearance on April 18, 2000, it is clear that the Crown was concerned about delay and about a potential 11(b) application by the defence. On April 19, Ms Hallett wrote a letter to regional Crown James Stewart advising him that the Judge felt the scheduled trial date of May 1 was unrealistic. She also advised that defence counsel had not protested the Judge’s opinion and that she expected he would attempt to use the delay to support an application for a section 11(b) stay.

Ms Hallett testified that she was concerned about the possibility of an 11(b) application, but there were a number of developments, many of which she did not have a lot of control over. She wrote Mr. Stewart that section 11(b) was always going to be an issue, but she felt the complexity of the case would prevent a successful 11(b) application: “I am trusting that the unique features of this case, characterized by Neville himself in yesterday’s proceedings as ‘too complicated to begin to address’ will ultimately prevent a stay on the basis of delay.”

Mr. Stewart agreed with Ms Hallett and testified that in his experience, how complicated a case is and the issues that arise can sometimes be a relevant factor on an 11(b) application.

Ms Hallett also wrote that she would be returning to Cornwall to review the contents of the nine boxes of material delivered to the CPS by Constable Dunlop. Although a Project Truth officer had conducted a preliminary review of the boxes, Ms Hallett testified that she was not going to rely on the police officer regarding the contents of the boxes and was going to thoroughly review the boxes herself.

Constable Perry Dunlop’s Boxes Delivered to Project Truth Office

On April 5, 2000, Constable Dunlop delivered nine banker’s boxes of materials to the Cornwall Police Service. On April 10, Constable Dunlop delivered a will-state and four volumes of appendices, also to the CPS. Following the April 18 court

appearance, Ms Hallett attended at the CPS and asked that the boxes be transported to the Project Truth office. It was her understanding that Project Truth officers would take possession of the boxes on that day:

I'm not sure that I wanted it done. I thought that that was the plan and I thought it was a good plan because ... if the boxes were brought to the Project Truth office ... it would facilitate my review of the content of the boxes which I felt duty bound to do.

In addition, since the boxes had been produced pursuant to an order that Constable Dunlop turn over all material related to Project Truth matters, it made sense for Project Truth officers to seize those boxes. Ms Hallett also thought that because of the allegations of cover-up being made by Constable Dunlop against the CPS, it would be “imprudent and unwise” for the CPS to retain those boxes.

Detective Inspector Hall testified that he was not happy that Ms Hallett had brought the boxes to the Project Truth office and that he made that clear to her. His concern was that he did not want Constable Dunlop later to say there was something missing from the disclosure and blame Project Truth for losing it. With respect to Ms Hallett's position that Project Truth should have control of the boxes because CPS was still being investigated for conspiracy, he said, “I made the comment ‘well, the allegations ain't any more severe against Cornwall Police than they are against the Ministry of the Attorney General.’”

In my opinion, this illustrates why it was best that the boxes be kept at the Project Truth office. I am of the view that these boxes were part of the OPP investigation and it was the OPP's responsibility to be the custodians of that information.

Although Detective Inspector Hall testified that he made his views about the boxes known to Ms Hallett at the time, she became aware only later that he wanted to keep the boxes at the CPS.

Review of Constable Perry Dunlop's Boxes: Shelley Hallett's Concerns About Privacy and Privilege

Ms Hallett reviewed the Dunlop boxes over three or four visits to Cornwall. Based on Detective Inspector Hall's notes, it appears that she was still reviewing the boxes in June. Ms Hallett testified that at this point she had not formulated a plan with regard to the defence reviewing the boxes; it was going to depend on their content.

In my view, it is clear that the review of these nine boxes was a major undertaking for Ms Hallett that inevitably led to further delay in providing disclosure

and preparing for trial. She should have requested additional assistance or resources to help her deal with this material more quickly and efficiently.

On June 27, 2000, Ms Hallett had an unannounced visit from Constable Dunlop at her Toronto office. As there were no officers present, she asked a clerk to attend and take notes. Constable Dunlop gave Ms Hallett a box of documents addressed to Attorney General Jim Flaherty. Ms Hallett testified that these documents appeared to be duplicates of the April 10 will-state and its appendices but she “wasn’t absolutely sure if that was the case.” Ms Hallett advised Constable Dunlop at the outset of the meeting that this was not the way for documents to come into her possession. She told him it was ill-advised to serve documents on the Ministry of the Attorney General himself and that the criminal justice system provides for this kind of information to be given to the police who turn it over to the Crown.

Ms Hallett discussed with him some personal material he had disclosed in the nine boxes. They also discussed the definition of records and privacy interests. Ms Hallett testified that she had almost completed her review of the boxes and it was clear that a lot of the material included in the boxes would be properly defined as a record within the meaning of section 278.1 of the *Criminal Code* pertaining to third party records. This section governs the disclosure of personal, private, and confidential records of complainants and witnesses in sexual assault prosecutions. Ms Hallett recalled some of the material being of a highly confidential and private nature, such as doctors’ prescriptions.

She advised Constable Dunlop that while some of the material in the boxes was personal and therefore should not be disclosed, some documents fell “in between ‘personal’ and ‘public’ documents.” She said some of these should be handed over to the defence and she would like his consent to release those documents. She suggested that Constable Dunlop get some legal assistance with regard to waiving his rights to privacy regarding the release of some of the documents. She was hoping these disclosure issues could be dealt with on consent rather than by application, in order to keep things moving in the Father MacDonald proceeding.

Although the notes of this meeting suggest a possible future meeting between Constable Dunlop and Ms Hallett to go through the documents to see “what deals with MacDonald,” they never had such a meeting. Constable Dunlop left the province for British Columbia shortly thereafter.

Ms Hallett wrote a letter to Detective Constable Dupuis on July 4, 2000, enclosing the notes of her meeting with Constable Dunlop as well as his letter to the Attorney General dated June 27, 2000.

Over the course of the summer, Ms Hallett completed her review of the Dunlop boxes.

Pre-Trial Conference—August 23, 2000

On August 23, 2000, this matter again came before Justice Desmarais. On this day, Ms Hallett provided the defence with Volume 9 of the Crown brief. She told the Court that she had reviewed the nine boxes provided by Constable Dunlop and that she believed that full disclosure had been made to the defence. She further advised that the criminal investigation of Mr. Dunlop was completed and that, although charges were not going to be laid, the results of the investigation were in the possession of the Crown and had been given to the defence.

At this time, the Crown was in a position to set a trial date, and Ms Hallett's position was that the items provided to the defence that day could be reviewed in sufficient time before the next trial date, which was April 2, 2001.

Defence counsel said he needed more time to review the new disclosure. In addition, Mr. Neville made some comments about the Dunlop boxes and the attempts being made to determine if Mr. Dunlop would consent to the disclosure of the boxes:

Albeit it has been turned over on various occasions, or parts thereof, to the authorities, parts of which I may indeed have in other forms, but we don't know for sure until we see it all, but that is going to be pursued as well.

Ms Hallett testified that she felt the relevant material in the boxes had been disclosed to the defence, but she was prepared to allow defence counsel time to review the boxes. She does not believe Mr. Neville accepted her offer. Ms Hallett testified that she understood Crown McConnery later released the entire content of the boxes to Mr. Neville. She never discussed the matter with him and was not aware that defence counsel later found a copy of notes by a CPS officer of David Silmser's first interview with the Cornwall police in the Dunlop materials. She was no longer working on Project Truth cases at that time.

Due to the new disclosure provided to the defence that day, the Judge agreed to adjourn the matter to October 18, 2000, and set a trial date at that time:

The adjournment is being granted on the basis of disclosures which have been made available to defence counsel as of today and it would appear to me, that out of fairness to defence counsel, that the adjournment in question is not an unreasonable request.

In my view, it took an inordinate amount of time for the Crown to review the Dunlop materials and disclose them to the defence. The untimely disclosure led to delays, and once again, the issue of further delay was not specifically addressed on the record.

Preliminary Inquiry on C-2 Allegations; New Indictment on October 18, 2000

The preliminary inquiry on charges relating to C-2's allegations was conducted from August 28 to 30, 2000. Father MacDonald was committed to stand trial on those charges, which included two charges of gross indecency and two charges of indecent assault. On October 18, 2000, a new indictment was prepared consolidating the previous indictment of September 1999 with these new charges.

As discussed above, defence counsel had earlier agreed before the Court to have these new counts included in the indictment. Ms Hallett testified that prior to the consolidation of those charges, she was not aware of defence counsel departing from this position.

She testified that she did not believe the decision to charge Father MacDonald in relation to the allegations of C-2 contributed to the delay in this case:

It may have been characterized later as contributing to the delay, but there were these other significant developments that were occurring at the time as C-2 had come forward and been identified, and I believe that those really were the significant contributors. But we wrapped all of it up at around the same time; that is, I concluded my review of the nine boxes from Dunlop. We had the results of the criminal investigation that became available at the end of July ... I looked at the two sets of notes and appendices and the will say from Constable Dunlop and was satisfied that they were, in fact duplicates that we—we made sure that we had a duplicate copy and that those had been provided to Mr. Neville. So things were coming to a conclusion, I think, more or less at the same time.

The nine boxes provided by Constable Dunlop were essentially duplicates of documents already in the possession of Project Truth. He delivered them on April 5, 2000, but it was not until August 23 that Volume 9 of the disclosure was provided to the defence and an offer extended to review the Dunlop boxes. The preliminary inquiry on the charges involving C-2 proceeded in the last week of August. I am of the view that the Crown timed the completion of the review of the Dunlop materials with the preliminary inquiry. Ms Hallett knew that the charges, if committed to trial, would be added to the existing indictment. There was therefore no reason to expedite the review of the materials.

The review of those boxes should have been a priority and should have been completed in the days following their release by Constable Dunlop. It is unclear to me whether the Crown or the Project Truth investigators were using a tracking system to determine what had been disclosed and what documents were duplicates.

Ms Hallett should have involved the Project Truth investigators in organizing and tabulating the documents. The organization and the disclosure of the fruits of an investigation is primarily a function of an investigator.

Mr. Pelletier testified that the police were providing the disclosure on the Crown's instructions, and he kept an exact copy of the disclosure in the Crown file. He did not keep a ledger to keep track of disclosure. Rather, when the police delivered materials to the defence, they copied Mr. Pelletier with a note indicating that this material was disclosed on a certain date. This tracking system was inadequate given the complexity of the prosecution and the volume of disclosure involved.

On October 18, 2000, Ms Hallett wrote to the trial coordinator and requested that the trial date be given priority. She provided the trial coordinator with defence counsel's and her available dates. A jury date was set for May 28, 2001.

Leduc Decision: Shelley Hallett Removed From Project Truth Cases

As discussed in the following section of this chapter, Ms Hallett was also the prosecutor in another Project Truth case, *R. v. Jacques Leduc*. On March 1, 2001, Justice James Chadwick stayed the proceedings in the Leduc case on the basis of wilful non-disclosure by the Crown. The Judge concluded that Ms Hallett had intentionally withheld the disclosure of police notes describing contacts Constable Dunlop had with the mother of an alleged victim. This decision had a significant impact on other Project Truth investigations and prosecutions, because Ms Hallett was removed from those cases. This led to a scramble to find new Crown attorneys to take over these files.

Ms Hallett testified that it was not that she did not want to continue with the Father MacDonald prosecution, but she believed that if she continued it would have "been perceived as somehow harmful to the prosecution." She was not confident that she could do her best on the case because of the breakdown in communication with Detective Inspector Hall, also discussed in the next section. Ms Hallett testified that the decision not to continue was dictated by the finding of wilful non-disclosure made against her in *R. v. Leduc* and was confirmed by the legal advice she received.

Although Mr. Stewart could not recall whether the decision to remove Ms Hallett from Project Truth cases was mutual, he did not think she would want to continue conducting these cases. Detective Inspector Hall had a conversation with Mr. Stewart on February 27, 2001, during which the officer expressed concerns about Ms Hallett being able to handle the Father MacDonald case:

I advised I didn't think Ms Hallett from my observations of her in the past two years could handle the case. In my view she didn't have it to be

a front line Crown bearing in mind the type of victims she was dealing with and that there would be issues brought up that would go right back to 1993.

According to Detective Inspector Hall's notes, Mr. Stewart "seemed to agree and has more of a concern with MacDonald case than that of Leduc." Mr. Stewart had no recollection of this call or what the note "he seemed to agree" means. He testified that he had no concerns about Ms Hallett's ability to prosecute the Father MacDonald case. Detective Inspector Hall's notes further state that he advised Mr. Stewart that Ms Hallett had previously said she did not want to do the Father MacDonald case. Mr. Stewart did not remember Ms Hallett ever suggesting this to him.

I disagree with the suggestion made by Detective Inspector Hall that Ms Hallett was not able to handle the Father MacDonald case. I heard Ms Hallett testify and have reviewed her credentials. After hearing all of the evidence, I have no difficulty concluding that she was an experienced Crown attorney who was more than capable of conducting the Father MacDonald prosecution.

James Stewart's Efforts to Find a New Crown

The case probably most affected by Ms Hallett's departure from Project Truth cases was *R. v. Father Charles MacDonald*. As the initial charges were now five years old, delay was a significant issue. A trial date had been set for May 28, 2001. It was critical that a new Crown be found as soon as possible.

On March 6, 2001, Mr. Stewart sent an e-mail to Assistant Crown Attorney Terrance Cooper about finding a replacement Crown for the Father MacDonald prosecution. Mr. Stewart wrote that "due to the history of this case, the numerous sub-plots, etc." the replacement senior Crown should have a number of characteristics. These included trial experience, excellent judgment, the ability to mentally focus on what is important due to the "background 'noise' in the case," and preparedness for personal sacrifice such as being away from family and friends. The final requirement noted was availability, since the new Crown would need "ample time to review and prepare as there is a substantial history."

Mr. Stewart testified that he knew the trial was approaching and that an experienced Crown was needed quickly. He suggested a number of people, including Lorne McConnery who ended up taking this on. This e-mail was about finding a Crown only for the Father MacDonald prosecution and not the other Project Truth briefs that had been assigned to Ms Hallett.

On March 8, Mr. Stewart met with Detective Inspector Hall in Kingston. The officer's notes of the meeting say, "will have another Crown Attorney do Father

Charles MacDonald trial. Won't be going until fall probably." Even though Mr. Stewart could not remember if he was already contemplating a possible adjournment of the matter, it appears clear from these notes that an adjournment was being considered due to Ms Hallett being replaced.

On March 28, Mr. Stewart received an e-mail from Crown Christine Bartlett-Hughes about the Father MacDonald matter. Ms Bartlett-Hughes had occasionally assisted Ms Hallett with the case. She was inquiring about the search for replacement counsel and made some suggestions, including having the investigating officers review all the material to assure themselves that everything had been disclosed. Mr. Stewart thought this was prudent advice in the circumstances and believed that Lorne McConnery did this once he was assigned to the file.

On March 30, Ms Hallett wrote to Mr. Stewart because she had received a videotape of C-2's statement and wanted to ensure it was disclosed and that another counsel was available to do that. She wrote that she would not be assuming any further disclosure responsibilities for the Father MacDonald case or any other Project Truth cases.

It is apparent that a Crown had not been assigned as yet. According to Ms Hallett's letter, a new Crown was expected to be available within the next two weeks: "You indicated to me that new counsel will be available within the next two weeks. I look forward to meeting with him to discuss and deliver the Crown brief in this case."

As will be discussed further below, Ms Hallett did not meet with Mr. McConnery once he was assigned in order to give him the briefs, as contemplated in this letter. She acknowledged this, but said she made herself available to him if he wanted to meet. At this point, Ms Hallett still had the entire Father MacDonald file. She did not believe anyone from the Ministry of the Attorney General asked her to return files following the decision to remove her from the Project Truth prosecutions. As a result, she kept them until another Crown was assigned and, as will be discussed below, she was responsible for providing the new Crown with the material.

I am of the view that Ms Hallett should have been required to turn over the Father MacDonald file to Mr. Stewart as soon as it was decided she would no longer continue with the case. All files belong to the Ministry of the Attorney General. The issue of the transition of the Father MacDonald file from Ms Hallett to the new assigned Crown, Mr. McConnery, will be further discussed below. Aside from ensuring a smoother transition, given the finding against Ms Hallett in the Leduc matter, she should not have remained in possession of any Project Truth files.

Lorne McConnery Assigned to Father MacDonald Prosecution

Mr. McConnery assumed carriage of the Charles MacDonald prosecution in April 2001. He was advised by Mr. Stewart that Crowns Christine Bartlett-Hughes and Kevin Phillips would be available to assist him. Mr. Stewart testified that given the history of the case and the point the matter was at, they would not assign a single Crown. Two lawyers were assigned to have carriage of this case and a third one to assist. Both Mr. Phillips and Ms Bartlett-Hughes had some trial experience. Mr. McConnery understood from his discussions with Mr. Stewart that he would be freed up from other responsibilities to work on this case full-time.

Mr. Stewart did not think he should have assigned more people to this case earlier. He did not agree that a number of Crowns were suddenly freed up because a Crown had been accused of doing something wrong:

The reality is that Ms Hallett was a senior counsel ... she had a junior Crown with her. And basically we were replacing her; when we did replace her with Lorne McConnery, senior Crown from Barrie, and Phillips from Ottawa. Ms Bartlett-Hughes may have dealt with a couple of motions but she wasn't—she wasn't on the case regularly.

...

MacDonald was almost ready to go, Ms Hallett had been on it for how long? So we're into a timeline thing in regards to it. And we've also had issues that were mushrooming all the time ... And so you had a situation where somebody is starting from a dead stop. And that's where McConnery is. He's never heard of the case and then all of a sudden we need him there to review all the materials, to get up to speed; hasn't been involved in the Leduc; hasn't been involved in anything.

Mr. McConnery received some background information from Mr. Stewart, relating primarily to the Jacques Leduc matter and Justice Chadwick's decision that resulted in Ms Hallett withdrawing from Project Truth cases.

When Mr. McConnery agreed to take on this assignment he was still in Barrie. The trial date was set for May 28, 2001, and the Crown hoped to still be able to accommodate that trial date. Mr. McConnery felt that this would be enough time to get ready for even a complex sexual assault trial, but the Father MacDonald prosecution turned out to be a lot more convoluted than he realized when he took on the case.

Lorne McConnery Cognizant of Delay Concerns

Because this matter had been going on for some time, Mr. McConnery was immediately concerned they would be facing an 11(b) application and thinks he may even have been advised that there would be one. Mr. McConnery thought it would be an uphill battle for the Crown on some, if not most, of the counts. According to Mr. McConnery, this is probably something he discussed with Mr. Stewart during briefings.

If the trial had proceeded in May 2001 as scheduled, Mr. McConnery would have expected an 11(b) application from the defence. In other words, he would have faced all the problems he later faced when the application was brought forward but with ten months less delay. According to Mr. McConnery, that ten months may have been significant in terms of saving the second set of charges.

Mr. McConnery testified that he discussed the 11(b) application with Mr. Neville early on, possibly the first time they met. This is in contrast to previous Crowns, who never directly addressed the 11(b) issue with defence counsel.

Defence Requests Adjournment on April 25, 2001

Near the end of April, the defence requested an adjournment of the trial. Since Mr. McConnery was still in Barrie, Mr. Stewart managed the adjournment issue on an interim basis. On April 11, 2001, Mr. Stewart wrote to Mr. Neville requesting that he deal with him for the time being.

Mr. Neville requested an adjournment on the basis that he had a case in Perth that was scheduled for the same time. He argued that a Crown mistake in that case caused it to continue longer than expected and that the Crown in the Father MacDonald case should accept responsibility for the delay resulting from Mr. Neville's unavailability. Mr. Stewart felt that whether the defence waived their 11(b) rights or not, they would get an adjournment, because "the reality is that if Mr. Neville is involved in a murder case in Perth, he can't be in two places at once."

Mr. Stewart testified that he was not sure whether at this time he turned his mind to an 11(b) application:

I had a new Crown coming on. We were going to get it on as fast as we could. Obviously, if there's a situation where the defence lawyer can't be available then we can't do it on the date that we're there because matters have been delayed.

Mr. Stewart advised Mr. McConnery that there would be an application by the defence for an adjournment and that the adjournment was related to another trial Mr. Neville was involved in. They discussed whether the Crown could maintain

the position that it would be ready for trial in May. Having very limited knowledge of the scope of what he was getting involved in, Mr. McConnery's position was they would try to be ready for the May trial date. Mr. McConnery did not give any instruction about the position to be taken by the Crown with respect to requiring a waiver of section 11(b). He doesn't recall talking about a waiver.

Mr. McConnery agreed that, in retrospect, by April 25, 2001, there was no realistic possibility that the Crown would be able to proceed on the assigned trial date the following month. At the time, however, it was still his hope that the trial would proceed.

Mr. Phillips attended the adjournment hearing. He argued that the Crown was seeking an 11(b) waiver and would not oppose the adjournment requested by the defence if a waiver was given. The agent appearing on behalf of Mr. Neville advised that he was not in a position to provide such a waiver. He argued that the Crown's lack of diligence in the matter Mr. Neville was involved with in Perth had led to delays in that trial, which made Mr. Neville unavailable to proceed with the Father MacDonald trial on the set date. The matter was adjourned to March 18, 2002, and the responsibility for the delay was to be decided by the trial judge.

This was a ten-month adjournment. When he learned of this, Mr. McConnery was very concerned: "[I was] not only concerned, I was shocked that at this stage of this indictment, an adjournment was 10 months length. I thought that was outrageous."

In the next couple of months, the Crown took steps to move the trial date forward. A number of letters were written to defence counsel to determine his availability for an expedited trial date. On April 25, 2001, Mr. Phillips wrote to defence counsel about trying to get the trial underway sooner than March 18, 2002. Mr. Phillips wrote again on May 11 and May 24, requesting a reply to the April 25 letter. The Crown never received a response.

Although Mr. Stewart could not recall the letters written to try to expedite the trial date, Mr. McConnery recalled that he and Mr. Stewart talked about judicial resources and whether they could get an earlier trial date: "We were very cognizant of the issue. We were very aware of another 10 month delay."

Mr. McConnery testified that he and Mr. Neville first met and discussed the case during the summer of 2001. They talked about the timing of the trial, and Mr. McConnery appreciated Mr. Neville was a busy counsel and wasn't going to be able to adjust his schedule easily. Mr. McConnery did not put anything formally in writing about changing the trial date after that time.

Disclosure of Constable Perry Dunlop's Boxes

In April 2001, the decision was made to paginate and copy the Dunlop materials. Mr. Cooper sent an e-mail to Mr. McConnery and others about this on April 20, 2001:

In order to ensure that we are in a position to prove in court exactly what is in the 9 Dunlop boxes, and so we can track disclosure to the various defence counsel in the cases outstanding, we are proposing to employ the system that survived years of motions in the Project Toy Cumberland murders ... It involves a pile of photocopying but also provides bullet proof accountability in terms of disclosure.

Mr. McConnery testified that when he arrived in Ottawa he spent a lot of time with Mr. Stewart discussing this issue, and they determined that they should send the materials to a private photocopying firm to have multiple copies made.

According to Mr. McConnery, the decision in the Leduc case about wilful non-disclosure by the Crown influenced their approach to dealing with these materials. Mr. McConnery made the decision to give defence counsel everything in the nine boxes. He did not want to be in the position that the previous Crown had been in and was worried about missing something:

I mean, I was going to be asked to review material when I really didn't know what the whole MacDonald brief was about. And so I think I erred on the side of caution and give it all to counsel.

Mr. McConnery testified that he felt a real obligation to get this material to defence counsel. He said if Mr. Neville were acting alone in this trial, reviewing what turned out to be over 10,000 pages would be a monumental task.

Mr. McConnery understood that Ms Hallett had reviewed the boxes to some extent to determine if there was any material relevant to the trial. He believed, however, that the contents might be relevant to a section 11(b) application, and he was concerned about holding anything back that could inform the 11(b) decision or maybe even the trial.

Mr. McConnery was concerned that piecemeal disclosure would result in something relevant being missed. The risk of this occurring was compounded in this case by the fact that there was no history or log of what had been previously disclosed. As will be discussed further below, in my opinion, this was a major issue in this and other Project Truth prosecutions and is the subject of some of my recommendations.

When Mr. McConnery made the decision to disclose the material in the boxes, the issue of whether Mr. Dunlop could advance a privilege claim or privacy interest in respect of some of the material was still outstanding. Ms Hallett had discussed some of these issues with Constable Dunlop on June 27, 2000, when he dropped by her office. This issue was still being dealt with in April 2001.

On April 25, Detective Inspector Hall wrote an e-mail to Mr. Phillips and Mr. Cooper about a telephone conversation he had with Mr. Dunlop about disclosing the boxes. According to the e-mail, Detective Inspector Hall had asked Mr. Dunlop if he had any objection to the Crown disclosing the contents of the nine boxes. Mr. Dunlop initially replied no, but then his wife suggested they run it by their lawyer first and Mr. Dunlop said he would do that the next day. Mr. Dunlop also stated that he wanted to deal directly with the Crown Attorney's Office. Mr. Cooper responded to Detective Inspector Hall's e-mail with a letter the next day. On the issue of Mr. Dunlop dealing directly with the Crown's office, Mr. Cooper said:

It is our position that Mr. Perry Dunlop should deal exclusively with you or another OPP officer for a number of reasons related to future litigation. Generally speaking a Crown does not interview a witness without a police officer being present.

Despite his name coming up in the correspondence between Mr. Cooper and Detective Inspector Hall, Mr. Stewart had no recollection of having any involvement with the issue of the Dunlop boxes and disclosure. However, he agreed with Mr. Cooper's advice about Mr. Dunlop. He did not want Mr. Dunlop giving disclosure directly to a Crown; he wanted the police and in particular Detective Inspector Hall to deal with this.

Mr. McConnery never discussed the Dunlop material with Ms Hallett and did not think anyone told him that she was concerned about this issue of privilege and privacy rights. Mr. McConnery could not recall whether he received any confirmation from Mr. Dunlop one way or the other about whether privilege was being claimed or waived.

The nine Dunlop boxes were delivered to Mr. Neville's office on August 15, 2001. There were over 10,000 pages of documents contained in those boxes. Mr. McConnery testified that he did not have time to review the material before delivery but he reviewed it all before trial. He thought most of the material was irrelevant for the trial but relevant for the 11(b) issue. Mr. McConnery had some concern about his decision to disclose the boxes without first satisfying himself on the issue of potential privilege: "I felt concerned about the decision I made but I was going to live with it."

In my view, Mr. McConnery addressed some of the disclosure issues in a more practical manner. The pagination was the first attempt to track and identify exactly what had been disclosed by the Crown. The decision to disclose all of the materials at least ensured that all Crown disclosure obligations had been met.

Lorne McConnery Begins Taking Notes

Mr. McConnery took notes of much of his activity on Project Truth files, including the *R. v. MacDonald* prosecution. Mr. McConnery testified that it was not his normal practice to make and retain diarized notes of his day-to-day activities, although he tried to keep good trial notes. He said this was “very unusual note-taking” for him. However, Mr. McConnery said that when he became involved in Project Truth he was aware of MPP Garry Guzzo’s position and it seemed that a public inquiry was likely. He felt it was incumbent on him to try to track the time he spent on the case.

Mr. McConnery had also been made aware of some interaction between Ms Hallett and Detective Inspector Hall during the *R. v. Leduc* trial. That was another reason why he wanted to take notes. Mr. McConnery agreed that his working relationship with Detective Inspector Hall was not a typical, collegial, open working relationship in which parties do not feel they need to document one another’s doings and sayings. He said it became more collegial as it progressed. Mr. McConnery testified that he did not think Detective Inspector Hall was always pleased with him but does not think it ever interfered with the officer doing his job as best he could.

Lorne McConnery Learns About the Difficult Relationship Between Shelley Hallett and Detective Inspector Pat Hall

Mr. McConnery did not write in his notes the comments Ms Hallett made about the Project Truth investigators, but he testified that she expressed disappointment in Detective Inspector Hall. Mr. McConnery thought it was clear they did not appreciate each other and they had their conflicts. The impression of the Detective Inspector Mr. McConnery was left with was that things were always on the record:

If it’s during working hours and you’re talking to Pat Hall, he may sit down and make a note of it. So, you know, be careful what you say to him. And maybe that informed my decision to also keep as many notes as I did, as well.

Mr. McConnery testified that both Detective Inspector Hall and Ms Hallett expressed anger toward each other. On a number of occasions, Detective Inspector Hall told Mr. McConnery that he thought Ms Hallett was a “princess” and that she treated the officers in a way that they didn’t like. She would, for example, ask them to put her briefcases in the car. Mr. McConnery recalled that some of the officers seemed more willing to go along with that, but it “seemed to aggravate” Detective

Inspector Hall. According to Mr. McConnery, Detective Inspector Hall also told him that he thought Ms Hallett worked hard but was slow to respond to things. He also had concerns about her punctuality. In all, “a major thrust of what I took from Pat Hall was that it was clear that he didn’t personally like Shelley a lot.”

Mr. McConnery testified that these issues about Ms Hallett probably came up in conversation with Detective Inspector Hall five or six times.

Transfer of File From Shelley Hallett to Lorne McConnery

As mentioned above, following the decision in *R. v. Leduc* and Ms Hallett’s removal from Project Truth files, she retained the files in her possession to be transferred to the new Crown(s) when assigned. The transfer of the file in *R. v. MacDonald* from Ms Hallett to Mr. McConnery was a slow process. Mr. McConnery said that when he was assigned to the Father MacDonald case, he did not want to press Ms Hallett to forward materials to him as he knew she was upset.

Mr. McConnery’s first conversation with Ms Hallett on this matter was on May 4, 2001, when they discussed the transfer of the file, which remained in her possession. Mr. McConnery understood that Ms Hallett was making an inventory list of what she had to turn over to him and that she hoped to turn this over to him the week of May 14. It took a lot longer for Mr. McConnery to receive the full file. He received it in portions.

Mr. McConnery knew Ms Hallett before taking on this file but does not believe they ever met face-to-face about this case. At some point she told him she did not want to speak to him about certain things, such as what happened in the Leduc matter. She had retained counsel in respect of the criminal investigation resulting from the decision in *R. v. Leduc*, and she had been advised not to say anything.

On May 9, Mr. McConnery received the Father MacDonald brief from the OPP. He began reviewing it the following day. This is more than one month after he was assigned to take over the Father MacDonald prosecution.

He hoped to pick up boxes of material from Ms Hallett on May 28, but they were not yet ready. According to his notes, he told her not to be concerned about expediting the Father MacDonald material, as he would be reviewing several other briefs. As will be further discussed, around this time Mr. McConnery was also assigned to review and provide opinions on a number of briefs involving allegations against clergy members as well as allegations of conspiracy.

Mr. McConnery was able to pick up some boxes of material at Ms Hallett’s office on June 4. There remained boxes containing preliminary inquiry transcripts, videotapes, correspondence, files, and casebooks, which she still needed to itemize.

On July 18, 2001, Mr. McConnery wrote a letter to Ms Hallett setting out which materials he had received and asking if there was further material forthcoming. Ms Hallett responded on July 27 that there were approximately four or five more boxes containing preliminary inquiry transcripts, videotapes, the correspondence file, and casebooks. She explained why it was necessary for her to take the steps she was taking before turning over the material to Mr. McConnery:

Because I am being kept in the dark about the contents of the report and what the police have further alleged about me, I must be extremely cautious about reviewing and copying material which may allow me to rebut false allegations against me similar to those that have already surfaced.

Ms Hallett acknowledged that the process of reviewing, copying, and creating an inventory delayed the handing over of remaining materials to Mr. McConnery. She further acknowledged that perhaps photocopying the whole thing and sending it off to Mr. McConnery would have been a better idea. She said she was doing her best under the circumstances:

... I was doing my best at this point. I was under criminal investigation at this time. I was retaining counsel and getting ready for the York Regional investigation.

...

I just was confronted with a couple of devastating incidents in my life at this point. I was doing my best to be professional. It was very difficult.

Mr. McConnery testified that there was no urgency as he had been told the priority was the review of the other briefs. He acknowledged, however, that at one point there was a possibility that the trial would be earlier than March 2002 and it would have been helpful for him to have all the materials in Ms Hallett's possession.

On September 14, 2001, Mr. Phillips sent an e-mail to Ms Hallett asking her about the preliminary inquiry transcripts. She responded on September 25, telling Mr. Phillips that she had been sick but had the transcripts and hoped to get them to him. They had not been sent as of October 18, when he sent another e-mail inquiring as to the whereabouts of the transcripts. On November 1, he sent a third e-mail about the transcripts: "Please please please get back to me one way or the other with respect to the transcripts for Fr. MacDonald."

Ms Hallett responded the next day that the boxes would be coming next week. Mr. Phillips made another plea for the transcripts on November 14:

I'm getting a lot of grief here because I have not obtained the prelim transcripts yet. I told Lorne that I would get them over the last month while he was away. Now he's back and I have not accomplished what I told him I would.

...

I can, I suppose, order them again but I'll have to get that ball rolling sooner than later.

On Friday, November 16, Ms Hallett responded to Mr. Phillips advising him that the box of transcripts was to be delivered in Ottawa on Monday. She provided a lengthy explanation about why the material had not been sent earlier, including her need to keep a strict record of everything handed over, her ill health during the fall, and the complications in relation to the Leduc appeal and the criminal investigation into her conduct. She described the latter as having:

... caused catastrophic disruption into both my personal and professional life with many adverse psychological, financial and other ramifications. These have necessitated consulting a number of various professionals and finding the time to prepare for such consultations as well as trying to do some of my own research on the issues of concern to me. My physical and professional survival is my priority at the moment.

She concluded by saying that she would endeavour to get the last shipment out in the following week. The transcripts were sent the following Monday, with a covering letter to Mr. McConnery saying that Ms Hallett was endeavouring to ensure that the next shipment would contain the final materials, including complete correspondence files.

Ms Hallett testified that she understands it is important for a new Crown to review preliminary inquiry transcripts before trial. Mr. McConnery also acknowledged that review of the preliminary inquiry transcripts is one of the priorities in preparation for trial. He did not recall whether he had other copies of the transcripts at this time.

The final delivery of materials, which included the correspondence file, took place on February 27, 2002. The trial was scheduled for March 18. Mr. McConnery agreed that the transition of the file was not ideal and that that he would have

liked to and expected to get the materials sooner. This delivery of material was Ms Hallett's final involvement in the Father MacDonald prosecution.

During most of this time, Mr. McConnery was not in contact with Ms Hallett. He understood that she felt she was not in a position to communicate with him, and he had no recollection of speaking with her after their initial discussions in the spring of 2001. He found she was very upset when he talked to her so he tried not to bother her.

Ms Hallett testified that she did not receive any direction or assistance from her supervisors regarding the transfer of the file. When asked about the transition, Deputy Attorney General Murray Segal, who was the Assistant Deputy Attorney General of the Criminal Law Division, said he was not aware how the transition was progressing. He said Ms Hallett is a meticulous person and it was understandable that she would be concerned about accurate record keeping, because the allegations against her in the Leduc matter related in part to what she knew or did not know at the time. Mr. Segal testified that he could not comment about the pace of transition except to say that it appears to have taken some time.

When asked whether someone from the Ministry should have made the decisions about the transfer of the file rather than leaving it to Ms Hallett, Mr. Segal responded that there was direct supervision of the cases by Mr. Stewart. Mr. Segal's understanding was that Ms Hallett was not making any decisions about the case but rather was making decisions about the inventory of material she was turning over; the decisions were not substantive. He recognized, however, that time can drag and that the Ministry could do a better job in ensuring a quick transition in situations when a prosecutor has to be replaced:

... [I]t would not be great if from an institutional point-of-view, the prosecution service was—could be said to be contributing to delay in terms of the interests of the case or victims or witnesses, and ultimately under 11(b) ... it's something we should do better with.

I have previously provided my views on Crown files. This is another example illustrating why the Ministry must maintain possession and control of its files if there is a change in the Crown prosecuting the case. The delay in providing Mr. McConnery with documents relevant to the case was not acceptable. It took almost one year for the complete file to be turned over to the new Crown, with the last delivery being less than one month before the trial was set to begin. I find that the delay was inexcusable.

There was even more urgency in this case given the history of delays in this particular prosecution. In my opinion, the file should have been taken from Ms Hallett as soon as the decision was made that she would no longer continue

with the Father MacDonald prosecution. If it was considered necessary, the file could have been photocopied so that Ms Hallett could make her inventory lists.

It is important to note that this case did not involve a change in prosecutor due to illness or scheduling. Rather, Ms Hallett had been accused of wilful non-disclosure in a high-profile case and, as a result, the charges were stayed and she was being investigated. Often when people are under that kind of stress they tend to close up in order to protect themselves from further criticism. It is not surprising that someone in that position would be reluctant to hand over material. In my opinion, the Ministry of the Attorney General should have a protocol in place for when a Crown counsel is accused of misconduct. Files should be removed from that person's possession and, if requested, photocopies made. In addition, a counsellor or support person should be provided to assist the person with the personal trauma associated with an accusation of misconduct.

The Crown Prepares for Trial

On January 24, 2002, Mr. McConnery and Mr. Phillips met with Detective Constable Dupuis and Detective Inspector Hall in Long Sault. They discussed potential witnesses for the Father MacDonald trial. Mr. McConnery testified that this meeting was to address the issue of subpoenas.

On February 6, Mr. McConnery met with Detective Constable Dupuis, primarily about providing transcripts and other things to some of the trial witnesses. He also spoke to defence counsel about the defence position that certain of the Crown complaints should not proceed, in particular those of C-8, Robert Renshaw, Kevin Upper, and C-5. Mr. Neville also raised the issue of who wrote notes found in one of the Dunlop boxes. Mr. McConnery made inquiries of police officers about this, although he can't recall whom he spoke to. The notes were identified as belonging to Sergeant Ron Lefebvre of the Cornwall Police Service. Mr. McConnery recalled that when the notes were identified, Mr. Neville's position was that they should have been disclosed years ago. Mr. McConnery agreed that they should have been disclosed at the time of the initial charges.

This situation again raises the issue of tracking disclosure. Mr. McConnery testified that no systems were in place to track the disclosure. He would have preferred to be able to know with certainty what had been disclosed throughout the proceedings in order to be satisfied that full disclosure had been made. In my view, if the prosecution of charges is proceeding, it is incumbent on all police officers involved in the file to provide the investigator assembling the Crown brief with a copy of their notes. If they are not claiming privilege, police notes are always relevant and should be disclosed. Perhaps it should be the responsibility of the officer preparing the Crown brief to request, obtain, and include the notes. A system has to be established to address this issue within police services.

As part of the preparation for trial, in early 2002, the Crown began to meet with the complainants. On February 27, Mr. McConnery, Mr. Phillips, and Detective Constable Dupuis met with David Silmsers. The purpose of the meeting was to introduce them. According to Mr. McConnery, they also wanted to assess Mr. Silmsers and get a sense of how to deal with him “because he was a bit of a handful.” Mr. McConnery testified that Mr. Silmsers walked out of the meeting after about twenty minutes.

Mr. McConnery said he was trying to be careful not to set Mr. Silmsers off. In his notes of the meeting, Mr. McConnery inserted an addendum about what happened just before Mr. Silmsers left the meeting:

During discussion, as he telling me he didn’t care about this trial, I said if all the [complainants] witnesses are like that it will be a short trial. I said if that’s your attitude, maybe I shouldn’t call him as a witness, and he said that was O.K., he just didn’t care about this case, it wasn’t like his civil trial. This happened shortly before he walked out.

Mr. McConnery testified that he never felt that anything Mr. Silmsers said affected his view of whether or not there was a reasonable prospect of conviction in the case:

He never gave me reason to believe that he didn’t believe in what he was saying and that he was trying to be truthful. He just—he was so angry, so upset, and I felt that he did things at times for effect.

On March 1, Mr. McConnery, Mr. Phillips, and Detective Constable Dupuis met with Robert Renshaw in Kingston. According to Mr. Phillips’ notes, they discussed an interview Mr. Renshaw had at Charles Bourgeois’ office during which Mr. Renshaw said he “wanted to be left out of it,” that Constable Dunlop wanted Mr. Renshaw “to add the stuff [he] wasn’t wanting to talk about,” and that Mr. Renshaw didn’t really have a problem with Father MacDonald. Mr. McConnery testified that he never saw any evidence to suggest that Constable Dunlop had influenced or suggested to Mr. Renshaw what he should say.

I comment further on the Victim/Witness Assistance Program in a later section, but the involvement of a Victim/Witness Assistance worker would have been useful to assist with the transition of the new prosecuting team.

Judge Reassignment Before Trial and Adjournment of Trial

Just before the trial was set to begin on March 18, 2002, there were two changes in the judge and an adjournment. The first assigned judge, Justice Michel

Charbonneau, was in a conflict because of his previous involvement as the plaintiff's lawyer in a civil case in which Detective Inspector Smith was a defendant. The plaintiff in that civil case had been criminally charged because of the OPP investigation of the St. Joseph's Training School between 1990 and 1995. The lawsuit was initiated against Detective Inspector Smith and others for malicious prosecution, with the plaintiffs arguing that the defendants failed to disclose all relevant material to the Crown during the criminal trial.

Detective Inspector Smith felt Justice Charbonneau would be in a conflict of interest if he were to be called upon to assess Detective Inspector Smith's credibility as a witness in the Father MacDonald trial. Mr. McConnery testified that Detective Inspector Smith brought this issue to his attention and that he in turn spoke to Mr. Stewart about it. Although Mr. Stewart could not recall this issue, he does not dispute that he may have been the one who dealt with it.

Justice Charbonneau was removed as trial judge and replaced with Justice Douglas Rutherford. This change would delay the start of the trial by approximately one week.

On March 4, Mr. McConnery received a call from Mr. Phillips, who advised him that the Father MacDonald trial was adjourned to April 29, 2002, and was now going to be heard by Justice Dan Chilcott. Mr. McConnery was concerned that the trial had been delayed over a month with no notice or opportunity to address it in court. The delay affected not only Mr. McConnery's schedule but also other people's, as sixty subpoenas had been issued and made returnable for March 18. Mr. McConnery was also starting to meet with the complainants about preparing for trial, and they were not taking news of delay well.

Mr. McConnery had another concern. He had previously had a meeting with Mr. Neville, who expressed concerns about the assignment of Justice Rutherford. According to Mr. McConnery, Mr. Neville was quite upset and asked if he would accompany him to ask the trial coordinator for another judge, preferably Justice Chilcott. Mr. McConnery did not think that was appropriate. As a result, this change raised a flag in his mind: "Mr. Neville had suggested that I go with him to the Trial Coordinator's Office, and so what occurred to me is, not having done that, had he done it unilaterally and the change was done to accommodate his wishes?"

Mr. McConnery said he had no evidence of this. He had no difficulty with the assignment of Justice Chilcott but was bothered by the appearance that Justice Chilcott was the presiding judge because the defence had requested him.

Mr. McConnery brought his concerns regarding the adjournment and the change in trial judge to the attention of Mr. Stewart. On March 5, Mr. McConnery spoke to the Regional Trial Coordinator, Mary Simpson. She denied that defence counsel wanted the judge changed and suggested that he write a letter to Justice Cunningham, the Senior Regional Justice.

On March 7, Mr. Stewart wrote an e-mail to Mr. McConnery outlining some of the issues and options regarding the change in trial judge. Mr. Stewart noted that the Crown would not have been concerned by the assignment of Justice Chilcott, but “now that there is this appearance of judge selection by the accused it is more than a little troubling.” Mr. Stewart suggested that a judge from outside the Eastern Region would have to take over the case:

The only viable course of action is for a new judge from completely out of the East region with no ties to the case or any judge in the East in light of this history and including the appeal on the Leduc matter. The fact that the accused in this case was represented on these very charges earlier by a presently sitting judge who is part of the Leduc appeal is also the basis for an out of town judge.

According to Mr. Stewart, the issue was not with Justice Chilcott. The problem was the discussion between defence counsel and Mr. McConnery about Mr. Neville’s desire to have Justice Chilcott assigned. Mr. Stewart was aware at this point that Mr. McConnery had spoken with the Trial Coordinator.

In the e-mail, Mr. Stewart provided several options for dealing with this issue. Option A was to convene a meeting of the Senior Regional Justice and defence counsel and outline the concerns of the Crown and what the Crown intended to do as a result. Option B involved the Crown stating that a motion would be filed to have the East Bench recuse itself. In the event there was not going to be a change in trial judge, Option C was that the Crown would determine a strategy as to the documents to file on the motion and who should argue it.

Mr. McConnery testified that this e-mail summarized some thoughts regarding concerns of an appearance that the accused selected the judge he wanted for the trial. Although he did not think there would necessarily be concern about this in the public domain, he felt the optics were terrible within the legal community. Mr. McConnery recalled that he and Mr. Stewart talked about bringing a motion to prevent all judges from Eastern Ontario from hearing this matter.

Mr. Stewart attempted to follow through with Option A and convene a meeting with the Senior Regional Justice and defence counsel. He sent an e-mail to Justice Cunningham on March 14. The e-mail deals with the adjournment of the trial but says nothing about the issue of getting an out-of-region judge:

The concern that the Crown has revolves around the recent re-scheduling of this matter from the March date to the end of April a period of 6 weeks or so without any consultation by any trial co-ordinator with the Crown.

Mr. Stewart said what he wanted to do was get into Chambers and find out why the judge was changed and the matter adjourned. Mr. Stewart thought there might be a problem in trying to change Justice Chilcott because the Crown had been content with Justice Rutherford, who was also from the Eastern Region, and the Crown would have been content with Justice Chilcott had he been initially assigned. Mr. Stewart was concerned that if they attempted to remove Justice Chilcott the Crown would be accused of judge shopping. At this point, Mr. Stewart felt all he had was a coincidence and he didn't want to put in writing an allegation against senior counsel without any evidence of wrongdoing. Mr. McConnery shared Mr. Stewart's opinion that the Crown had no difficulty with Justice Chilcott but for the appearance that he was the presiding judge because the defence had wanted him assigned.

Mr. Stewart received a letter in response from Justice Cunningham indicating he felt it was unnecessary for Mr. Stewart and Mr. Neville to meet with him further on the issue. He said the change came about because of a shortage of judicial resources in the Eastern Region.

As to the fact that Justice Cunningham did not get to hear Mr. Stewart's global concerns about perception and appearance, Mr. Stewart reiterated that the problem was that the Crown had been content with Justice Rutherford and he was from the area. The Crown did not raise any concerns at that time about wanting an out-of-region judge.

At some point, Mr. Stewart and Mr. McConnery had a discussion with Mr. Segal about this issue. He advised that he did not want them to proceed with a motion to have the East Bench recuse itself.

It is clear from the documents and testimony that the Crown had concerns about the delay of the trial and the change in judge. In his letter to Justice Cunningham, Mr. Stewart raised only the issue of the delay, and this concern was addressed by the Regional Senior Justice. This was a missed opportunity for the Crown to bring to the attention of the Regional Senior Justice its concern about the change of judge. As a result, Justice Cunningham was deprived of the opportunity to deal with this issue. There should be a mechanism whereby the Crown and defence counsel can bring issues before an administrative justice in an open and timely manner.

Lorne McConnery Provides Further Disclosure to Defence

On March 11, 2002, Mr. McConnery sent a letter to Mr. Neville enclosing notes of Detective Inspector Smith and wrote that Detective Constable Fagan had retired and he was attempting to recover his original notes. On April 10, Mr. Phillips wrote a letter to Mr. Neville enclosing materials from Detective Constable Fagan. Mr. McConnery acknowledged that these notes ought to have been

disclosed long before this date. He reiterated that it would have been of assistance to have some kind of summary or registry to track disclosure.

Mr. McConnery testified that early in 2002 it was clear there would be a stay application heard at the commencement of trial. He knew one of the arguments advanced would be timeliness of disclosure. According to Mr. McConnery, one has to look at the disclosure and determine whether or not it is significant. He acknowledged that the notes of Detective Inspector Smith and Detective Constable Fagan could have been critical. Mr. McConnery testified that frequently, Detective Inspectors' notes are not turned over because while Detective Inspectors direct the investigation, they do not interview or deal with witnesses. In my view, if the defence thinks certain material is important, the Crown should review the material in question and decide whether it should be disclosed. A tracking system for disclosure could have prevented a number of recurring issues that put the Crown in a difficult position.

Lorne McConnery Withdraws Charges Related to C-8 and C-2

On March 12, 2002, Mr. McConnery interviewed C-8 to prepare him for trial. C-8's earlier testimony in the preliminary inquiry and his involvement in the prosecution of another accused had caused Mr. McConnery concern about the Crown decision to proceed on his charges. When Mr. McConnery read the preliminary transcript, he thought it was abundantly clear that C-8 was not being truthful on a number of issues. Mr. McConnery had significant concerns about the reasonable prospect of conviction and wanted to meet with C-8 to assess whether he was attempting to tell the truth. Mr. McConnery wanted him to understand that if they proceeded, C-8 was going to have a very difficult time.

Mr. McConnery's notes of the interview state that C-8 wanted the charges dropped. Mr. McConnery was not taken aback by this and believes an OPP officer had told him this before his meeting with C-8. Mr. McConnery's view was that C-8 was prepared to say whatever he had to say to get out of this trial. Mr. McConnery testified that he was not obliged to withdraw the charges because the complainant did not want to proceed. However, he was already close to withdrawing the charges before this interview.

Mr. McConnery continued to talk to C-8 about his relationship with Constable Dunlop, about the videotapes seized from Ron Leroux's house in 1993, and about the allegation he made against Father MacDonald regarding the incident that allegedly occurred at his father's funeral. C-8 told the Crown that this incident never occurred. Mr. McConnery said that C-8 conveyed to him that his real concern was abuse by Mr. Leroux and that "Dunlop kept pushing the priest": "C-8 kept saying to me, that Dunlop kept saying 'More is better. More is better.'... It was like a mantra."

Mr. McConnery testified that he felt C-8 had destroyed his own credibility. Although there was a real potential that Constable Dunlop had played a role, Mr. McConnery “couldn’t jump to that condemnation alone of Perry Dunlop” based on what C-8 told him. However, it crossed his mind that perhaps Constable Dunlop had been instrumental in the untruths Mr. McConnery heard from C-8.

Mr. McConnery advised defence counsel before the charges were formally withdrawn. He does not know when C-8 was informed.

Mr. McConnery also made the decision to withdraw the counts relating to C-2. He had a meeting with C-2 on March 13. According to Mr. McConnery, he did not approach this meeting in the same way as he had the meeting with C-8, but he also had concerns about the reasonable prospect of conviction regarding C-2’s allegations before he met with him. A primary reason for this meeting was so Mr. McConnery could make a personal assessment of C-2.

During this interview, C-2 for the first time added a recently deceased family member as a possible participant in the group activity referred to in his allegation. Upon reviewing the material from C-2, Mr. McConnery felt there was a progression in his story that was concerning.

A lot of the discussion with C-2 was about Constable Dunlop. Mr. McConnery was not sure whether this was his concern or if C-2 just spent a lot of time talking about it. Mr. McConnery was, however, aware of the issue of Constable Dunlop’s involvement with the various complainants.

Mr. McConnery met with C-2 on the second day of the hearing to advise him of his decision to drop the charges. He said that C-2 was very angry.

Mr. McConnery tried to explain to C-2 that he had spoken to a number of prosecutors about his evidence and that it was Ministry policy to assess the prospect of conviction. Mr. McConnery told C-2 that he could not in good conscience say he felt there was a reasonable prospect of conviction. Although Mr. McConnery did not speak to any other Project Truth Crown other than Mr. Phillips about C-2’s allegations, he did run his decision by other members of the Barrie Crown Attorney’s Office.

Defence Brings an Application for a Stay Under Section 11(b) of the Charter

On or about March 26, 2002, the defence filed an application to have the proceedings stayed on the basis that there was an unreasonable delay in bringing the matter to trial, which violated Father MacDonald’s right to a trial within a reasonable time under section 11(b) of the *Charter*.

When the stay application was brought, Detective Constable Dupuis raised with Mr. McConnery, and possibly Detective Inspector Hall, the conversation he

recalled between Mr. Pelletier and Mr. Neville that occurred in the hallway of an Ottawa courthouse sometime before January 26, 1998.

Mr. McConnery testified that following this discussion with Detective Constable Dupuis, he met with Mr. Pelletier. According to Mr. McConnery, the record was clear that there was no waiver and Mr. Pelletier was aware there was no waiver. Mr. Pelletier had no recollection of discussions with Mr. Neville as described by Detective Constable Dupuis. As such, Mr. McConnery was of the view that he could not advance an argument of waiver based on this information from Detective Constable Dupuis.

Stay Application Hearing

The stay application was heard over a number of days starting on April 29, 2002. During his submissions, Mr. McConnery acknowledged that there was an exceptional amount of delay, seventy-three months, and that there had been no waiver of section 11(b) rights.

Mr. McConnery's position was that in acknowledging the excessive delay, he had to examine the reasons for the delay and try to ensure the Court understood that each and every delay was at the time well reasoned and properly sought by the Crown. On the other hand, the Crown had been aware that there was a risk to those requests. It was Mr. McConnery's belief that both Mr. Pelletier and Ms Hallett were very aware of the risk and exercised the best judgment they could in light of what was becoming an incredibly complex prosecution. He thought if the Court understood that and understood the reasons for the delay, this would offset somewhat the excessiveness of the delay.

Mr. McConnery felt the most significant issue was the societal interest in hearing this allegation:

... This was a situation where we had a community that was ripped apart in many respects by this, and I can tell you I recall feeling at the end of the application that Justice Chilcott was critical of me because he kept telling me, "Mr. McConnery, do I need to remind you this is a criminal trial, it's not a public inquiry?"

Mr. McConnery's position was that Constable Dunlop was somewhat of a renegade and that the Crown should not be held completely responsible for what he had done. Mr. McConnery felt that the situation with Constable Dunlop was very different from that with other police officers.

Mr. McConnery was also of the view that everybody, including Father MacDonald, his counsel, and the Crown, preferred to have one trial, although he recognized that delaying a trial raises the risk of section 11(b) becoming a

factor: “It was a very complex matter and I believe Ms Hallett felt that the complexities outweighed the delays that were being caused by the adjournments.”

The Crown called Mr. Dunlop as a witness on the stay application. Mr. McConnery felt it was necessary to call Mr. Dunlop because he felt that he was responsible for some of the delay and it was incumbent to call him to explore that delay:

I felt there was a real need to explore the issues that he presented us, to try to get some picture of the truth of what he was doing, as opposed to the general view that was out there ... I had no idea if he was going to help or hurt the 11(b) application, but I felt it was essential the court hear from Dunlop because the court would be able to assess whether or not we as prosecutors or the investigators should have, could have, done more than they did to move it along.

Mr. McConnery testified that the examination of Mr. Dunlop developed into a cross-examination more than he had intended, but “it wasn’t an angry or confrontational cross-examination.” Mr. McConnery thought Mr. Dunlop made broad over-generalizations and he felt an obligation to explore those. Mr. McConnery also thought Mr. Dunlop was evasive on many matters during the 11(b) hearing. Mr. McConnery did not think he examined Mr. Dunlop differently than he would any other evasive witness. He never asked that Mr. Dunlop be declared a hostile witness.

Mr. McConnery made notes of his contacts with Mr. Dunlop about his travel arrangements to attend at the hearing. Mr. McConnery was trying to arrange for him to come to Cornwall on Thursday, April 25, so he could review his materials. Mr. Dunlop’s counsel advised Mr. McConnery that Mr. Dunlop could not come until Saturday, April 27, because of his employment. Mr. McConnery was then advised that Mr. Dunlop wanted a flight on April 28 and a return flight on May 1. Mr. McConnery testified that he spent a lot of time on these arrangements and would not ordinarily do this.

On April 29, Mr. McConnery met with Mr. Dunlop in person for the first time. They discussed some general issues about Mr. Dunlop’s involvement and why he made some of the decisions he did. Mr. McConnery did not tell Mr. Dunlop that he was intending to take a slightly different approach with him as a witness. He did, however, tell Mr. Dunlop that he was going to disclose the notes of their meeting to defence counsel. He had Mr. Dunlop initial them. Mr. McConnery felt it necessary to disclose the notes because he had never met Mr. Dunlop. He had not previously filed an affidavit trying to capture his evidence because Mr. Dunlop would not speak to him when he called.

Mr. McConnery testified that if he had told Mr. Dunlop that he might have to cross-examine him on the stand, Mr. Dunlop would have walked out of the interview. Mr. McConnery felt that Mr. Dunlop had created this situation by his refusal to cooperate. He did not want to come down the week before or to be involved at all with police officers. According to Mr. McConnery, he did not do anything underhanded with Mr. Dunlop:

I think when I called him as a witness I tried to get as clear a picture of what he did as I could get for the court. And if that meant I pressed him a little bit, I did that.

Justice Chilcott Grants the Stay

On May 13, 2002, Justice Chilcott granted the application for a stay of proceedings based on unreasonable delay. With respect to the Crown's decision to join the charges, Justice Chilcott held that the Crown should have proceeded with the first set of charges and set a trial date as soon as possible after Father MacDonald was committed to stand trial in October 1997.

He further found that although it may have seemed reasonable and desirable to try the first and second sets of charges together, "the reasonableness aspect should have been superseded by the fear of an application for the relief as provided in Section 11(b) of the Charter." Justice Chilcott also found that the Crown contributed to the delay by using C-2 as a complainant, appreciating the impact it would have on the pending May 1, 2000, trial date.

Justice Chilcott found as a fact that the greatest contributor to the delay was Mr. Dunlop, and found that Mr. Dunlop was deceitful:

Mr. Dunlop had significant information relating to this prosecution. He had conducted his own investigation, and continued to investigate while the proceedings were ongoing. He continued to undertake to provide, and promised to provide, the material he had and to have no contact with the media. There were oral and written instructions that he was ordered to comply with. He refused to provide the statements and documentation until he had seriously imperiled this prosecution and it was too late to be salvaged.

...

Now it is clear that Dunlop was trusted at the time, and that was a mistake. Mr. Dunlop was the cause of a large part of the delay ... I do not attribute the delay by reason of Dunlop's actions or lack thereof to any part because of his purposeful deceit and deception. However, if I had to charge that delay to some party, I would, as a

result of considering all the circumstances, have to lay it at the feet of the Crown because the Crown and the police were aware of Perry Dunlop's procrastination and deception and his reluctance to provide the material.

As discussed in Chapter 7, I have made some findings with respect to Perry Dunlop's actions. While I agree with Justice Chilcott's decision and reasoning on this issue, I find that had someone from the Ministry of the Attorney General been assigned to oversee Project Truth prosecutions from the outset and on a full-time basis, the Crown might have better appreciated Constable Dunlop's impact on Project Truth cases and as a result might have been able to take swifter and more decisive action to deal with the issue.

Mr. McConnery advised Mr. Stewart about the decision on the stay on May 13, 2002. He requested that Mr. McConnery write a letter to Paul Lindsay, the Director of the Crown Law Office—Criminal, about a possible appeal.

On June 5, 2002, Mr. McConnery wrote to Mr. Lindsay. Mr. McConnery did not see an obvious error in the decision. He was requesting a review regarding a possible appeal because of the community interest and the need for the community to have a trial in this matter. On June 18, 2002, John Pearson, the Director of Crown Operations, Western Region, wrote to Mr. Segal about the decision not to appeal Justice Chilcott's decision. The letter concluded that an appeal would not be sought:

In conclusion, it cannot be said that the trial judge disregarded, misapprehended or failed to appreciate relevant evidence bearing upon issues of significance to the decision to stay the proceedings. Moreover, His Honour's legal analysis discloses no errors of law. Consequently, it is opinion that the Reasons for Judgment in *R. v. MacDonald* disclose no grounds of appeal on which the Crown can appeal the stay of proceedings.

Managing Delay Due to Joinder of Charges

Father MacDonald was initially committed to stand trial on charges involving the original three complainants, David Silmser, John MacDonald, and C-3, on October 24, 1997. A number of events and decisions made by the Crowns involved in this matter delayed the proceedings. One of the most important, if not crucial, decisions was to delay the trial to permit new charges to be joined to the original ones, as complainants came forward. That decision was first taken by Mr. Pelletier, who recognized that it was a calculated risk in favour of the Crown.

Ms Hallett was then assigned to prosecute the file. She reviewed the file, assessed the situation, and ultimately came to the same conclusion as Mr. Pelletier.

Mr. McConnery then inherited the file, and by that time the stage had been set for the delay application.

The decision to join all charges together was made by experienced trial lawyers, applying the law as they saw fit at the time. While in hindsight the option to proceed on separate indictments may have been preferable, one cannot fault the decision.

However, knowing that it was a calculated risk and that the delay would become a live issue at trial, the Crown should have made the issue front and centre at every court appearance and should have constantly monitored the progress of the charges.

R. v. Jacques Leduc: First Trial

Crown Discusses Criminal Charges With OPP

In or around mid-May 1998, Ontario Provincial Police Detective Inspector Tim Smith advised Crown Attorney Robert Pelletier that complaints of a sexual nature had been made against local lawyer Jacques Leduc and that the OPP was intending to investigate. On May 22, Mr. Pelletier was updated about the investigation and it was requested that a Crown be assigned. Mr. Pelletier advised that he had not found a Crown to assign yet but should be able to advise Detective Inspector Smith the following week.

On June 18, Detective Inspector Smith left a message for Mr. Pelletier that Mr. Leduc should be arrested immediately for two reasons. First, it had become common knowledge that the police were investigating him. Second, Mr. Leduc was attempting to hire one of his alleged victims to work for him over the summer. As a result, Detective Inspector Smith did not think the police should wait until July 9, the date on which a number of suspects were to be charged, to lay charges against Mr. Leduc.

As discussed in Chapter 7, on the institutional response of the OPP, charges were laid against Mr. Leduc on June 22 with respect to the allegations of C-16 and C-17. A third complainant, C-22, came forward later.

Case Assigned to Shelley Hallett

On or around July 2, 1998, Crown Attorney Shelley Hallett was assigned to the Leduc case. She had a short meeting with Milan Rupic, who was at the time the Director or Acting Director of Special Investigations of the Crown Law Office—Criminal. During this meeting, she was asked to take on a number of Project Truth matters, including the Jacques Leduc file.

When Ms Hallett was assigned to these matters, she had no knowledge of the Project Truth investigations. She believed she was assigned because the three files concerned individuals involved in the administration of justice. She relied on the Project Truth officers to provide her with some background information when she first came to Cornwall.

Amendments to Charges

The charges against Mr. Leduc were amended on July 17, 1998. Ms Hallett provided the Project Truth officers with some comments about why she thought the wording of the charges should be changed. She testified that she was thinking about issues regarding consent and the different ways in which the offence of sexual exploitation can be committed. She was considering, for example, that if this was a jury trial, and the jury had a reasonable doubt about consent, this would not be an issue for an offence where consent was not a factor.

One change Ms Hallett recommended was the addition of a charge under section 212.4 of the *Criminal Code*, the offence of obtaining sexual services from a youth for consideration. The police amended the charges following her suggestions.

Shelley Hallett Receives Letter From Gerry Langlois

Sometime in July 1998, Ms Hallett had a very brief telephone conversation with C-16's civil counsel, Gerry Langlois. Mr. Langlois advised Ms Hallett about a piece of additional disclosure he had received from his client. She testified that she told him "very emphatically" to contact the Project Truth officers; she was not equipped to investigate any further allegations and this should be done by the police. The officers thus became aware of further information relating to gifts given by Mr. Leduc to C-16. Ms Hallett believed the OPP took an additional video statement from C-16 in which there was an escalation in the seriousness of the alleged sexual acts.

On August 5, Ms Hallett received a letter from Mr. Langlois, dated July 23, which referred to C-16 attending counselling and to the timing and frequency of alleged incidents. As will be discussed below, this letter was disclosed only upon the request of the defence at the beginning of the trial, in January 2001.

A judicial pre-trial was held in the *R. v. Leduc* matter on November 23, 1998. On November 25, the preliminary inquiry date was set for April 1999.

C-22 Provides a Statement

As discussed in Chapter 7, a third complainant against Mr. Leduc, C-22, was initially reluctant to provide a statement to the police or to become involved in the

investigation or prosecution. Ms Hallett was aware of an attempt to interview C-22 in June 1998, at which time he did not want to provide a formal statement although he was not denying that something had happened. On July 15, she called Detective Inspector Pat Hall and requested that he make another attempt to interview C-22.

Another attempt was made to obtain a formal statement on July 30. Although C-22 conceded that sexual misconduct had occurred with Mr. Leduc, he was not comfortable coming forward and making a formal statement. As discussed in Chapter 7, Detective Constables Joe Dupuis and Steve Seguin told C-22 that he could be subpoenaed. Ms Hallett could not recall if she was aware of that and did not believe she suggested this approach. She wanted to speak with C-22 before going this route: “That’s a rather stressful and intimidating kind of approach to a witness who might have very relevant evidence to give.”

Indeed, all investigators dealing with alleged victims of historical sexual abuse must keep in mind the emotional fragility of such witnesses, as was explained by Dr. Wolfe and Dr. Jaffe.

Ms Hallett attended with Detective Constables Dupuis and Seguin at C-22’s residence on November 24, 1998. She told C-22 that she believed he had material evidence to provide in this case and requested that he accompany the officers to the police detachment to provide a statement. According to Ms Hallett, she spent less than fifteen minutes with the officers in speaking with C-22. She told the officers that she just wanted to see if he would agree to provide a videotaped interview. They did not discuss any substantive or material part of his allegations. C-22 agreed to attend the Long Sault Detachment, where he gave a videotaped statement. Ms Hallett did not attend the interview but spoke with the officers to get a brief synopsis afterward.

Ms Hallett acknowledged that it was unusual for her to accompany the police to encourage a complainant to make a statement but said it is consistent with the duties of a Crown attorney under the *Crown Attorneys Act* to cause further investigation by the police and have evidence collected:

And Crown Attorneys are often in a position of trying to persuade reluctant witnesses who are holding the truth captive, as has been expressed by the Supreme Court of Canada in KGB for example. Crown Attorneys are often in a position of persuading those kind of reluctant witnesses to be forthcoming with what they know about a matter and to testify or give a truthful statement to the police and to the court.

Although it was not something she did frequently, Ms Hallett said she at times persuaded or encouraged reluctant witnesses to provide evidence and this

was consistent with her duties as a Crown. Detective Constable Dupuis thought it was unusual for Ms Hallett to be involved at this stage of the investigation, but he did not think the meeting was improper.

Practice Memorandum PM [2005] No. 34 replaced the 1997 Policy P-1 “Police—Relationship with Crown Counsel. I have alluded to this memorandum in other sections of this chapter. It provides the following recommendation to a Crown at the pre-charge stage of an investigation, when giving case-specific advice:

It is unwise for Crown Counsel to participate directly in the gathering of evidence at the pre-charge stage of an investigation. Crown counsel should avoid direct involvement in statement taking or attending a fresh crime scene to supervise the gathering of evidence. Any such participation may lead to a blurring of our role as advisors and prosecutors and impair our ability to review independently a charge after an Information is sworn. Direct participation in the evidence gathering process may make us witnesses rather than advocates.

Ms Hallett’s involvement with C-22 to convince him to provide a statement and participate in the prosecution of Mr. Leduc went beyond the call of duty. As indicated in the practice memorandum, Crown counsel must be careful in becoming involved in the investigation as there is a risk that the Crown could become a witness. As long as the Crown is aware of this risk and is careful, as Ms Hallett was here, it is not improper for Crown counsel to speak with a reluctant witness or complainant.

Delay in Transcribing C-22’s Interview

Ms Hallett testified there was some delay in the preparation of the transcript of C-22’s videotaped interview, which she received only on February 18, 1999, nearly four months after the interview was conducted. She was not prepared to recommend further charges without it. She acknowledged that she could have made a decision to proceed separately on the new charges but she felt it was still early enough in the process that waiting would not prejudice the accused.

Ms Hallett did not take any steps to expedite the transcription. Although she was concerned about delay, she was also very concerned about the seriousness of the complainant’s allegations. She felt there was another month before the preliminary inquiry during which defence counsel could review the material.

In my view, the delay in having the interview transcribed was too long. Transcripts must be produced in a timely manner.

Information Sworn on C-22's Allegations

On March 9, 1999, Ms Hallett wrote a letter to Detective Inspector Hall recommending that new charges be added to the information in respect of C-22's allegations. She had had the transcript to review for more than two weeks, since February 18. She testified that she was concerned about delay but that the nature of the allegation was a countervailing consideration.

A new information was sworn on March 11. It included five counts of sexual assault, one count of sexual interference, one count of invitation to sexual touching, six counts of sexual exploitation, and three counts of obtaining sexual services for consideration, involving three separate victims.

Defence Counsel Advised of New Charges

Also on March 9, Ms Hallett advised defence counsel that a videotaped statement had been taken from C-22 on November 24, 1998, and that new charges were being laid against Mr. Leduc. The Crown attorney suggested that with respect to these new charges the matter be put over to April 8, 1999, the date of the preliminary inquiry, rather than making an interim appearance in court. She felt this would involve less publicity.

Ms Hallett further advised that she was sending a copy of the transcript of the interview separately and would provide a copy of the videotape as soon as possible. At this point, she had not yet received a copy of the videotape. She requested that Michael Edelson, defence counsel for Mr. Leduc, let her know if the arrangements outlined were unsatisfactory.

Defence Raises Disclosure Issues

Mr. Edelson responded to Ms Hallett's letter on the same day, expressing some concerns about the timeliness of disclosure. In particular, he wrote that she had not advised him during the judicial pre-trial on November 25, 1998, that C-22 had made a statement on November 24. Mr. Edelson was also concerned that Ms Hallett had not disclosed the video of C-22's statement earlier.

Ms Hallett wrote a reply to Mr. Edelson on March 15, 1999. She pointed out that the judicial pre-trial took place on November 23 rather than November 25, that is, one day before C-22 provided a statement. Ms Hallett did not know on November 23 whether C-22 would provide a statement or be a witness in this matter. She also told Mr. Edelson that she had not yet received the videotape and requested that he execute an enclosed disclosure agreement in respect of the C-22 videotape. On October 20, 1998, Ms Hallett had requested an order with respect to conditions restricting the copying and return of videotapes of the

two earlier complainants in the matter. Justice Paul Bélanger further ordered that the conditions apply with respect to any other videotape.

Despite having this order from Justice Bélanger, Ms Hallett wanted an express statement from defence counsel that this order would apply to the videotape statement of C-22. She testified that the fastest thing would have been for Mr. Edelson to call her and state that he agreed the order applied to this particular tape, which “might have speeded things up a bit.” When Ms Hallett received the written undertaking on March 17, she disclosed the tape to Mr. Edelson.

With respect to the delay in advising defence counsel of C-22’s allegations and the potential for further charges, Ms Hallett said that as of November 24, 1998, she did not know if further charges would be laid. Before disclosing the statement she wanted to review the allegations, consider all the evidence obtained by the officers, and make a meaningful decision as to whether further charges should be laid.

Ms Hallett acknowledged that the issue of timeliness of disclosure was raised in 2004, when she was no longer working on the file. The events of this prosecution, which will be outlined in detail in this section, ultimately led to an application to stay the charges for delay in the fall of 2004. In preparation for this application, Crown counsel Lidia Narozniak and Christine Tier prepared a memorandum about delays. They concluded that most of them were attributable to the Crown. Attached to this memorandum was a disclosure timeline and a list of the “most troubling aspects of the delayed disclosure.” Ms Hallett had no input into these documents. While she agreed with some points contained in them, she disagreed with others. I am of the view that Ms Hallett should have been consulted when putting this memorandum together to ensure that the new Crowns were aware of Ms Hallett’s perspective about some of the delays and the circumstances surrounding them.

The list attached to the memorandum was titled, “Top Six Disclosure Problems of the Crown.” The first item listed is the November 24, 1998, videotaped statement of C-22, which was not disclosed until weeks before the preliminary inquiry. As discussed, Ms Hallett was not aware when the statement was taken whether charges would ensue. I am of the view that Ms Hallett should have advised defence counsel earlier about the existence of another complainant, despite the fact that she was not sure yet if charges would be laid, given that the preliminary inquiry was proceeding on April 8, 1999. Even if charges were never laid, I believe that the Crown would have had to disclose C-22’s statement.

The second problem mentioned in the list is the disclosure of Volume 2 of the brief, which was in Ms Hallett’s possession on August 19, 1998, but was not disclosed until March 15, 1999. This volume included C-22’s July 30, 1998, statement, in which he acknowledged, for the first time, sexual activity

with Mr. Leduc but refused to provide a formal statement. Ms Hallett acknowledged that this was a mistake. She thought Volume 2 had already been disclosed:

We had both gone through the pre-trial conference, two of them, in the fall and neither of us had had Volume 2. It had come in with a number of inserts for Volume 1. That's the way I received it and so I was thinking that these were updates only that I was getting with respect to Volume 1. I didn't realize I was also getting a Volume 2. When I did find out that that had occurred, I enclosed it in a cover letter along with Volume 3.

...

And that was definitely a failing on my part and I was very sorry about that.

Ms Hallett did not know if keeping a disclosure log would have prevented this mistake. She explained that she has never worked with a log or register and keeps track of disclosure through correspondence since she prepares cover letters for everything disclosed. She testified that the police tracked what was disclosed and she relied on them. Ms Hallett was not sure that having a disclosure register would have helped her get Volume 2 of the brief to defence counsel sooner.

The third problem listed related to Volume 5 of the brief, which was disclosed on November 14, 2000, but included statements taken the year before. Ms Hallett testified that OPP officers assembled Volume 5 and she disclosed it to the defence as soon as she received it. She assumed that the majority of Volume 5 contained recently collected material with perhaps one or two older statements that had been overlooked. The volume in fact contained three statements taken in June and July 1999, and two statements taken in May 2000. Also included was a will-state and notes of Detective Constable Dupuis for the period March 30, 1999, to October 11, 2000. Although she can't recall why these documents were disclosed later, Ms Hallett testified that she did not delay in handing them over in any way.

The fourth item on the list is a second statement from C-17 taken on June 9, 1998, which included many additional substantive details regarding his allegations. This was disclosed ten months later on April 12, 1999. Ms Hallett testified that she did not know why it was not disclosed earlier but acknowledged that it ought to have been.

The fifth item on the list was the letter Ms Hallett received from C-16's civil counsel, Gerry Langlois, in the summer of 1998, which was disclosed at the start of trial, as mentioned above. Ms Hallett testified that she put the letter in her correspondence file and therefore was not thinking about it for disclosure purposes. She noted, however, that the information about the letter would have been recorded

in Detective Constable Seguin's notes, because Ms Hallett contacted him after receiving the call from Mr. Langlois.

Most items on this list relate to delays in disclosure that could have been prevented. As I have previously stated, there should be a disclosure log or register system implemented in all Crown offices to track when disclosure is received from the investigators, when it is disclosed to the accused or defence counsel, and what was disclosed. There was no appropriate system to manage and track disclosure in the Project Truth prosecutions.

Defence Seeks an Adjournment: Shelley Hallett May Be Subpoenaed to Testify

On March 26, 1999, Mr. Leduc's lawyer, Michael Edelson, wrote a letter to Ms Hallett enclosing a notice of application for an adjournment to be heard on March 30. The defence was seeking an adjournment "pending full and complete disclosure from the Crown." As a "matter of professional courtesy," he also advised her that her personal involvement in the investigation and continuing non-disclosure would "inevitably" lead to her being served with a subpoena to testify at the preliminary inquiry or trial.

Ms Hallett was concerned about some inaccuracies in the notice of application. For example, she felt that the paragraph referring to the non-disclosure of the videotaped statements of certain complainants and witnesses stated the situation incorrectly, because she had simply insisted on the undertaking before disclosing the tape. She also took issue with the characterization, in the supporting affidavit, of a number of things as being outstanding disclosure issues.

Ms Hallett wrote a responding letter on March 29, enclosing a copy of the affidavit on which she noted some of her objections. In particular, she noted that some of the requests for additional disclosure pertained to material that had been in the defence's possession since July 1998, and this was the first time a request for follow-up disclosure had been made regarding this material. There were also a number of items listed by the defence that Ms Hallett did not think needed to be disclosed. These included requests relating to meetings between Crown counsel and witnesses to be called by the Crown in this case. In her letter, Ms Hallett advised that these meetings were not investigative interviews conducted by the police and that the Crown is entitled to have such meetings with witnesses "for the purpose of getting to know them and the nature of the evidence they will give in court."

The application was heard on March 30, and Ms Hallett consented to the adjournment. She testified that she consented although she disagreed with many of the outstanding disclosure issues the defence submitted. She was meeting the disclosure obligations as they arose.

Shelley Hallett's Memo to James Ramsay About Her Co-Counsel

Although Ms Hallett was never summonsed to testify, she was concerned at the time about having a co-counsel who could continue with the prosecution if she was removed from the case. On August 27, 1999, Ms Hallett wrote to James Ramsay, Deputy Director, Trial Assignment, and asked that Erika Chozik be assigned as her co-counsel on the Leduc matter. Ms Chozik had experience as an assistant trial Crown and Ms Hallett felt she would have been a very good, strong co-counsel on this case.

Ms Hallett testified that although Ms Tier, her co-counsel on the Leduc matter, was very good and had other strengths, she did not have much trial experience. Ms Hallett's request was not acted upon. While I did not hear any evidence about how this request was considered by Mr. Ramsay or his colleagues, I would hope that such a request would be given serious consideration.

Preliminary Inquiry

The preliminary inquiry in *R. v. Leduc* was held in November 1999. There were sixteen charges in the amended indictment, and the Judge committed Mr. Leduc to stand trial on thirteen of those charges. Ms Hallett prepared an indictment containing all of those counts. When she realized it would be a jury trial, she prepared a second indictment on January 15, 2001, including only the offences of sexual exploitation: "I felt that the jury would have an easier time understanding only those counts with respect to which consent would not have been available as a defence."

The first indictment remained in reserve, and Ms Hallett would have probably withdrawn it at the end of the trial. According to Ms Hallett, these counts were before the court in abeyance; she did not withdraw them herself.

Pre-Trial Conference

The pre-trial conference took place in early 2000, shortly after the preliminary inquiry. The trial date was set for January 2001. According to Ms Hallett, there were other earlier dates available but Mr. Edelson requested this date and waived any section 11(b) issue with respect to the delay in the trial.

Trial Begins in R. v. Leduc

On January 15, 2001, the trial in *R. v. Leduc* commenced before Justice Colin McKinnon. The first day was spent on pre-trial matters, and Ms Hallett began calling evidence on January 16. She asked Justice McKinnon for a publication ban on the identity of the alleged victims. This ban was to cover all forms in

which information might be published, including the Internet. There was a particular concern about the website operated by Richard Nadeau.

On January 17, defence counsel advised Justice McKinnon that Mr. Nadeau had placed some information about the preceding day on his website. Consequently, Ms Hallett consented to the defence's request for a re-election for a trial by judge alone. On or around January 22, Mr. Nadeau was cited in contempt of court for continuing to publish information on his website. On January 29, Mr. Nadeau was ordered to remove the material from the website because it was in breach of the publication ban. These events are discussed in more detail in the "Websites" section of this chapter.

C-16's Mother Testifies About Contacts With Constable Perry Dunlop

On February 7, 2001, C-16's mother testified. While being cross-examined by defence counsel, she stated she had two contacts with Constable Perry Dunlop. Ultimately the dates of these contacts were identified as May 8 and June 15, 1998. Furthermore, she testified that Detective Constable Dupuis was aware of the second contact because he was present in her home when she received the call. Ms Hallett testified that when she heard the evidence she was "astonished," as it was the first time she had heard of any contacts between Constable Dunlop and witnesses in this matter. She believed the evidence also surprised the officers.

As discussed in Chapter 7, Detective Constable Dupuis acknowledged that he had never made Ms Hallett aware of this incident. Once Ms Hallett learned of this contact, she felt it was relevant and that any material the Crown had in its possession with respect to Constable Dunlop should be disclosed to the defence.

Ms Hallett testified that up until February 7, 2001, the trial was progressing well.

Detective Inspector Pat Hall Brings References in Perry Dunlop's Will-State of Contacts With C-16's Mother to Court

As discussed in Chapter 7, Detective Constable Dupuis contacted Detective Inspector Hall to advise him of what had occurred during the cross-examination of C-16's mother. As a result, Detective Inspector Hall came to court with copies of references from Constable Dunlop's will-state and notes, as well as a copy of his notes of the July 1998 meeting with Constable Dunlop and Detective Inspector Smith. The entry in Detective Constable Dupuis' notebook of the June 15, 1998, contact between Constable Dunlop and C-16's mother was not located until a number of days later. Immediately Ms Hallett thought this was inadvertence, mistake, or oversight. She did not think the officers had intentionally withheld information.

During the lunch break on February 7, there was a meeting between the Crown, police, and defence counsel. Crowns and police present at this meeting were Ms Hallett's co-counsel Ms Tier, Detective Inspector Hall, Detective Constable Dupuis, Detective Constable Seguin, a law student, and Ms Hallett. The meeting was brief. The materials that Detective Inspector Hall had brought to court were shared with defence counsel at this time. According to Ms Hallett, during the course of the meeting, defence counsel were aggressive and critical of the officers. They were being critical about the fact that Project Truth officers had not included references of their meeting with Perry Dunlop on July 23, 1998, in their notes and in the brief. They suggested that the officers had wilfully attempted to suppress references to contacts between Constable Dunlop and C-16's mother.

Ms Hallett testified that during this meeting, defence counsel did not indicate they intended to bring an application to stay the proceedings as a result of this disclosure issue. The defence requested material and the Crown was going to provide it. At this time, Ms Hallett was not sure what the result of the new information would be.

“This Is All News to Me” Comment by Shelley Hallett

Ms Hallett testified that when Detective Inspector Hall provided the documents of the meeting he and Detective Inspector Smith had with Constable Dunlop on July 23, 1998, to defence counsel, she said, “This is all news to me.” She was referring to the meeting between the officers and Constable Dunlop, which she was learning about for the first time. Ms Hallett had not seen any reference to that meeting in any notes, nor had she obtained Detective Constable Dupuis' notes of the contact between Constable Dunlop and C-16's mother.

Detective Inspector Hall testified that he interpreted Ms Hallett's comment as meaning she did not have any knowledge of C-16's mother's contacts with Constable Dunlop. He had difficulty understanding her comment because he thought she had done a careful review of the boxes of material disclosed by Constable Dunlop.

Ms Hallett does not agree that she implied the officers had done something wrong. She always took the position that this was an oversight by the police and herself: “I always indicated that the failure to include this information in the brief was an oversight, was not wilful, was inadvertent, and that had always been the position of the Crown.”

Ms Hallett testified that regardless of Detective Inspector Hall's interpretation of her “This is all news to me” comment, he never raised his concerns with her.

Detective Inspector Pat Hall Reminds Shelley Hallett She Was Provided With the Dunlop Material in March or April 2000

Following the meeting with defence counsel, Ms Hallett met with the OPP officers. Detective Inspector Hall reminded her that she had reviewed the Dunlop material in March or April 2000. According to Detective Inspector Hall, Ms Hallett responded, “Yeah, yeah, I know.” As I have discussed in Chapter 7, Detective Inspector Hall took this as an acknowledgment that what she had told defence counsel was inaccurate.

Ms Hallett said she remembers acknowledging she had seen the Constable Dunlop will-state. She never disputed the fact that she received and reviewed those materials. In fact, she had told the Court a year earlier that she was in possession of them and was reviewing them for the purpose of disclosure in the Father MacDonald case. As a result, she was aware of the contacts between Constable Dunlop and complainants in the Father MacDonald case, but not aware at the time of contacts between Constable Dunlop and complainants in the Leduc matter. Therefore, she did not perceive that these materials needed to be disclosed to counsel for Mr. Leduc.

Ms Hallett was aware of the allegations about Constable Dunlop’s role in the Marcel Lalonde prosecution. She agreed that by 2001, if something came up in a trial about Constable Dunlop speaking with a complainant, that would have been a matter of concern for her.

She had received the Constable Dunlop will-state from a number of sources as of June 2000. She wrote in a July 4, 2000, letter to Detective Constable Dupuis that she would review the statement and appendices to ensure that the copy provided by Constable Dunlop on June 27, 2000, was a duplicate of the copy provided on April 17, 2000. She did not believe that this required close scrutiny of the content. Ms Hallett testified that she had made it clear that she did not read the content of the will-state closely. This is in contrast to the Dunlop boxes, which Ms Hallett said she reviewed diligently to ensure that Detective Constable Don Genier came to the appropriate conclusions about disclosure. Ms Hallett did not review the Dunlop materials with the Leduc prosecution in mind.

Detective Constable Steve Seguin Delivers to Shelley Hallett a Copy of Her July 4, 2000, Letter to Detective Constable Joe Dupuis

On February 8, 2001, Detective Constable Seguin provided Ms Hallett with a copy of the letter she had sent Detective Constable Dupuis on July 4, 2000. Ms Hallett recalled Detective Constable Seguin giving her this letter in the morning before she went into court. She said the only thing Detective Constable Seguin

told her when he handed her the letter was “Pat likes you but he’s a ‘cover your ass’ kind of guy.” That was the only explanation Ms Hallett received about why she was being given the letter. Ms Hallett did not ask Detective Constable Seguin for a further explanation: “I was confused. I couldn’t really understand why it was that he was providing this to me. I was of course busy. I had to get into court. We were continuing to call the case.”

Ms Hallett’s perception was that Detective Inspector Hall was reminding her that she had the Constable Dunlop notes and will-state. She felt Detective Inspector Hall was “banging [her] over the head” with the issue. Ms Hallett never asked him why he sent the letter; she had too many other things on her mind. Likewise, Detective Inspector Hall never asked her what she did with the letter.

According to Detective Inspector Hall, the purpose of delivering this memorandum to Ms Hallett was to remind her of its existence, as her files were probably in Toronto, and so she would be in possession of it, if required for disclosure. His motive for delivering the letter is discussed in Chapter 7.

Ms Hallett testified that Detective Inspector Hall never told her he believed this letter, from the Father Charles MacDonald prosecution, should be disclosed to the Leduc defence. In Ms Hallett’s opinion, the letter was not the kind of item that would ordinarily be disclosed:

... It’s a piece of internal correspondence. It’s my writing to a police officer on the case ...

...

... the fact that there is a complainant that’s named in this document would make an additional reason either for not disclosing it or for ensuring that the name was blocked out, if, for some reason, it—I perceived it to be something that should be disclosed.

As will be discussed, Ms Hallett’s non-disclosure of this letter was later the basis for a stay of proceedings granted in the Leduc matter, which was overturned by the Ontario Court of Appeal. The Court of Appeal found that the Crown “had no reason” to disclose the letter. The disclosure guidelines for Crown attorneys in force at the time provided that Crowns generally need not disclose any internal Crown counsel correspondence.

Defence Makes Several Disclosure Requests

On February 12, 2001, counsel for Mr. Leduc, Steven Skurka and Phillip Campbell, wrote a letter to Ms Hallett saying they were concerned that there had been wilful

non-disclosure by the police. They requested statements from the officers and other documentation, including OPP and Cornwall Police Service records, and memoranda and correspondence related to Constable Dunlop's contact with C-16's mother.

Ms Hallett construed the defence's letter as a request for disclosure accompanied by a serious assertion of wilful non-disclosure. This was not a notice of a formal application to stay the proceedings. Although defence counsel noted they were considering whether to seek remedies for non-disclosure, Ms Hallett testified that those remedies could include things other than a stay. Ms Hallett thought defence counsel might be persuaded that this was not a matter worth pursuing.

As discussed in Chapter 7, Detective Inspector Hall's interpretation of this letter from defence counsel was that it required the disclosure of internal correspondence.

Ms Hallett shared the February 12 letter with Detective Inspector Hall and his team, who were going to help her respond to the disclosure requests. On February 15, she received a response from Detective Inspector Hall in which he stated that he had not at any time wilfully failed to make disclosure or instructed Detective Constable Dupuis to withhold disclosure. According to Ms Hallett, this was an important statement to make because that was what was at issue. Detective Inspector Hall also provided an outline of all his contacts with Constable Dunlop further to Ms Hallett's request.

The defence made further disclosure requests on February 14 and 15. The February 15 letter requested a number of things including "any correspondence, notes, memos, letter or other records reporting to the Crown about issues related to Perry Dunlop, whether generally or before and after July 23, 1998." Ms Hallett still did not believe the July 4 letter should be disclosed:

... by the 15th of February, I had advised the court in a very fulsome statement that I had come into possession of the Dunlop notes and will say in April of 2000, that I had reviewed them in a brief way, in a cursory way, that I had not seen the references to the contact between Perry Dunlop and the mother of C-16, and taking full responsibility for that failure to disclose at that time.

...

... I certainly wasn't reading this letter that came a day later as a request for anything other than correspondence from the police to the Crown, and certainly not requiring the disclosure of my letter of July 4th of 2000 to Detective Dupuis.

Defence Brings Application for a Stay of Proceedings

On February 14, 2001, Mr. Skurka advised the Court that he would be bringing a motion to stay the proceedings pursuant to section 24(1) of the *Charter*.¹⁰ The motion was to be based on the non-disclosure by Detective Constable Dupuis and other senior ranking officers. Ms Hallett responded by stating on the record that she was also surprised by the contact between Constable Dunlop and C16's mother: "That was the first of my knowledge that there had been any contact by Constable Dunlop with any witness or potential witness in this particular case."

She also mentioned that Detective Constable Dupuis had made a note of the contacts but left it out of the brief through oversight. Ms Hallett advised the Court that she was aware of Constable Dunlop's connection with victims and witnesses in other cases but did not see the connection between Constable Dunlop and this case. She also advised the Court that as of April 2000 she had the Constable Dunlop notes and will-state, and had briefly reviewed the material. She stated that she had not seen the contact between Constable Dunlop and C-16's mother and was taking full responsibility for that failure to disclose.

Detective Inspector Hall was not present in court when she made this statement. As discussed in Chapter 7, Detective Inspector Hall believes he first became aware of Ms Hallett making these representations to the Court during his testimony in the Leduc proceeding, when Ms Hallett reiterated what she had said to the Court on February 14.

After the stay application was filed, Ms Hallett discussed the response to the stay application with Detective Inspector Hall. She also discussed the stay application with Detective Constable Dupuis, who was quite upset about it: "He was sick over it and I felt terrible for him."

Ms Hallett testified that she believed there had been no intentional failure to disclose the contacts between Constable Dunlop and witnesses in this matter. In her opinion, the contact between C-16's mother had been brief and benign. It consisted of only two telephone contacts, and C-16's mother had outlined the content of each call during her testimony. Ms Hallett thought it sounded like Constable Dunlop had been providing moral support and not attempting to unduly influence the witnesses in the case.

Ms Hallett testified that she told the officers that the Crown's strategy was to argue inadvertent failure to disclose. She felt the oversight could be proven to the Court by calling the officers and, if necessary, C-16's mother.

10. This section provides, "Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

Richard Nadeau Testifies on Stay Application and Urges Justice Colin McKinnon to Step Down

The stay application began on February 19, 2001. The first witness called by the defence was Mr. Nadeau. At the outset of his evidence, Mr. Nadeau made a statement to the Court stating his belief that Justice McKinnon was in a conflict of interest because he had previously represented Cornwall Chief of Police Claude Shaver. He urged the Judge to step down and presented to the Court, in support of his allegation of a conflict of interest, letters written by Justice McKinnon in 1994. Justice McKinnon responded that it was known he had acted for Chief Shaver, the Cornwall police, and the Cornwall Police Services Board for many years. He did not feel that his previous involvement required him to step down:

I feel no conflict of interest. The conflict of interest of course, can be both perceived and it could also be felt. I personally feel no conflict of interest in being able to deal with the Jacques Leduc trial in a fair and impartial manner.

Ms Hallett testified that she was unaware that Justice McKinnon had been involved as a lawyer with the Cornwall Police Service and that he had been involved in recommending disciplinary action against CPS Constable Dunlop. Ms Hallett was “taken by surprise” by what Mr. Nadeau told the Court and the documents he presented. She said she wished that Mr. Nadeau had brought those letters to her attention earlier as it may have made a difference in the case.

Ms Hallett advised the Court that the Crown would not request that Justice McKinnon step down from the case. Justice McKinnon stated his intention to visit the Cornwall Police Service and review files to see if there was anything that could impede his ability to deal with this case fairly.

On February 20, Justice McKinnon advised the Court that he had reviewed files at the CPS, which refreshed his memory about his involvement with the CPS in relation to Constable Dunlop. He explained that in February 1994 he was consulted by the Cornwall police with respect to Constable Dunlop’s disclosure of a statement to third parties. Justice McKinnon took the position that this disclosure constituted “an offence against discipline” and prepared draft charges in respect of Constable Dunlop. Justice McKinnon determined that he should not hear the application for the stay of proceedings and arranged for Justice James Chadwick to hear the application.

The stay application continued on February 21 before Justice Chadwick.

OPP Officers to Be Called As Defence Witnesses Meet With Defence Counsel

Ms Hallett testified that when it was first announced that there would be a stay application brought based on the failure of the police to disclose, the Crown needed the notes of Detective Inspector Smith, who was retired. They received a will-state from Detective Inspector Smith dated February 9, 2001, about the meeting with Constable Dunlop in July 1998. Ms Hallett met Detective Inspector Smith for the first time on February 19, 2001. She and Detective Inspectors Smith and Hall discussed the case and went to dinner together that evening. Ms Hallett testified that the July 4, 2000, letter was not discussed. She never sensed from Detective Inspector Hall that he was concerned by a failure on her part to disclose anything and wishes that he had told her about his concerns at that point.

Ms Hallett knew the officers would be called as defence witnesses on the stay application because the defence had the onus on this application. She explained that this was an advantage to the Crown because she could lead evidence in cross-examination of those witnesses to support the position of the Crown.

According to Ms Hallett, on February 20, Detective Inspector Smith said the officers wanted to speak with defence counsel about what they would be asked during their testimony on the stay application. Ms Hallett had never heard of officers wanting to meet with defence counsel and said it was usually the other way around. She was “perplexed” by the request but recognized that the officers were named in the notice of stay application and that they appeared to be the targets. In other words, the police were being held responsible for the failure to disclose. She did not think there was anything to hide and felt that this might speed up the questioning of the officers by defence counsel:

So although I was taken by surprise and rather flummoxed, I have to say, by this request by Detective Smith, I went along with it and the officers went to meet with the defence counsel in my knowledge and with my blessing.

According to Ms Hallett, she understood the officers were going on a “reconnaissance mission” to find out what questions defence counsel were going to ask them and report for discussion. It was the first time in twenty years of practice that she had seen this.

The meeting between the police officers and defence counsel is discussed in Chapter 7. It is sufficient to note here that during the meeting Detective Inspector Hall agreed to provide defence counsel with a copy of the July 4 letter. Ms Hallett testified that when she spoke with them afterward, Detective Inspectors Hall and Smith both were vague about what had occurred during the meeting. At no point

did either of them tell her that they were intending to disclose a document to defence counsel.

Detective Constable Joe Dupuis Borrows Shelley Hallett's Copy of the July 4, 2000, Letter

Following the meeting the officers had with defence counsel, Detective Constable Seguin called Ms Hallett and asked if she had the July 4, 2000, letter. She believed he said the officers could not find their copy. Ms Hallett testified that she did not know what he wanted the letter for, but she assumed that Detective Inspector Hall wanted to keep his files intact. She told Detective Constable Seguin that he was welcome to get the letter from her and make a copy.

As discussed in detail in Chapter 7, Detective Constable Dupuis testified that Ms Hallett was not advised at this point that the officers intended to give the letter to defence counsel. He thought she already knew that was why they were getting her copy of the letter, as he assumed Detective Inspector Hall had so advised her. According to Detective Constable Dupuis, they made a copy of the letter and returned her copy to her while Ms Hallett was meeting with Detective Inspector Smith. There were no further discussions with her about the letter or what the officers intended to do with it.

Detective Inspector Hall testified that the primary reason he provided the document to defence counsel was because he was going to be questioned under oath the next morning and was not going to lie. He thought handing the document over to defence counsel directly without vetting it through her was the appropriate thing to do because he “knew” she had lied to defence counsel on February 7, 2001.

Shelley Hallett and Christine Tier Have Dinner With James Stewart

On February 21, 2001, Ms Tier and Ms Hallett had dinner with Mr. Stewart in Cornwall. According to Ms Hallett, he arrived unexpectedly from Ottawa at the end of the day. She thought he came for moral support. Shelley Hallett said she had not expressed to James Stewart any concerns or problems about her working relationship with the Project Truth officers. Ms Tier was reporting to the Ministry of the Attorney General on a daily basis, and Ms Hallett believes that is how Mr. Stewart knew they were in the middle of a stay application.

Mr. Stewart testified that he recalled getting a phone call from either Ms Hallett or Detective Inspector Hall or both of them. They were not getting along, so he drove to Cornwall and had dinner at the Best Western with Ms Hallett and Ms Tier. Mr. Stewart could not recall who phoned him before he came to Cornwall. He was adamant that it is not possible that he was just checking in on them. The

evidence is unclear as to who contacted Mr. Stewart, but it is clear he felt he had to go to Cornwall.

According to Mr. Stewart, Detective Inspector Hall was also in the restaurant. He came over and talked to them for a while. Ms Hallett also recalled Detective Inspector Hall joining them briefly in the dining room. According to her, they had a brief discussion and Detective Inspector Hall alluded to “some surprise that was going to occur the following day” but did not describe it further.

Mr. Stewart thought that whatever the problem was, it had been resolved. When he left Cornwall, he did not feel there was a significant problem. He did not remember Ms Hallett voicing any concern about her working relationship with any of the Project Truth team members. Had she told him about a serious problem between her and Detective Inspector Hall, he would have acted on it.

Detective Inspector Pat Hall Continues His Testimony and Is Cross-Examined

Detective Inspector Hall gave his evidence on the stay application on February 21 and 22, 2001. During cross-examination, Ms Hallett got him to agree that the Crown makes the disclosure to the defence and that the police provide the material for the disclosure. She also asked him some questions about the Dunlop material and its connection to the Leduc matter; he confirmed there was no connection. According to Ms Hallett, the intention in this line of questioning was to demonstrate that Constable Dunlop never identified Mr. Leduc as a perpetrator of sexual abuse in Cornwall.

Ms Hallett also asked Detective Inspector Hall some questions about the June 15, 1998, note in Detective Constable Dupuis’ notebook. Detective Inspector Hall acknowledged that the note was not provided to the Crown as part of the brief in this case, saying that it was “just simply overlooked by Constable Dupuis while preparing the Brief in the Leduc matter.” Ms Hallett then asked Detective Inspector Hall, “Now are you aware of any other piece of evidence or note or memo book entry that connects Perry to any other Crown witness in this case?”

Detective Inspector Hall responded that he was not. Ms Hallett testified that she was trying to demonstrate how limited the Constable Dunlop contacts were with witnesses in this case. She also asked Detective Inspector Hall direct questions about whether the Project Truth officers conspired to withhold this note from the defence. The purpose of these questions was to establish that the failure to include the information in the brief was inadvertent and not a wilful or intentional failure to disclose.

Detective Constable Dupuis was called to the witness stand after Detective Inspector Hall. Ms Hallett asked him similar questions about his notebook entry

and why it was left out of the Crown brief. Ms Hallett acknowledged that both Detective Inspector Hall and Detective Constable Dupuis testified that the Crown had not intentionally withheld material disclosure from the defence.

Detective Constable Dupuis' testimony revealed that the police had provided defence counsel with the July 4, 2000, letter from Ms Hallett to Detective Constable Dupuis. He was asked about the meeting he, Detective Inspector Hall, and Detective Inspector Smith had with defence counsel on February 20. In particular, Detective Constable Dupuis testified that defence counsel asked at that meeting if the officers had any document in their possession indicating that the Crown did a review of Constable Dunlop's will-state. Detective Inspector Hall said there was such a document. Detective Constable Dupuis then testified that he and Detective Inspector Hall agreed to provide defence counsel with that document.

Mr. Skurka read the letter out in court and asked Detective Constable Dupuis questions about why the police agreed to provide the document to the defence:

Q: You thought it important enough in response to my question to bring me that document on that day, right, Sir?

A: Yes, Sir.

...

Q: Of course, when I stood up in court that day, and said what I did about the position of the defence, you know that I didn't have that letter or that internal document, don't you Detective Dupuis?

A: That's correct ...

Q: Right. You know I didn't have that until you brought it to me on February 20 of 2001, don't you?

A: Yes, Sir.

At the outset of Ms Hallett's cross-examination of Detective Constable Dupuis, she elicited from him that he had attended her hotel room to obtain a copy of the letter before it was turned over to the defence and that she did not have any qualms about providing it to him. In testimony, Ms Hallett pointed out that Detective Constable Dupuis testified that the police could not find the letter of July 4, 2000, "and that, unfortunately, created a suspicion around me that was palpable in the court that day, that somehow I had had something to do with trying to suppress that letter."

Ms Hallett testified there was a lunch recess, following which Mr. Campbell asked to recall Detective Inspector Hall. She did not know why defence counsel wanted to recall him. At the outset of Detective Inspector Hall's evidence, he stated that he and Detective Constable Seguin had met with defence counsel over lunch and that defence counsel had put to him specific questions about the July 4, 2000, letter. Ms Hallett had not been not advised about this lunch meeting between the OPP officers and defence counsel.

During his testimony, Detective Inspector Hall provided specific information about Detective Constable Seguin giving a copy of the July 4 letter to Ms Hallett on February 8, 2001:

Q: You gave that letter to Detective Seguin to give to Ms Hallett so that she would be aware of it and would be able to disclose it, is that right?

A: That's correct.

Q: Inspector, you recognize the relevance of that letter in that it showed that in July 2000, Ms Hallett did a review of the Dunlop notes and material, isn't that correct?

A: That's correct.

Q: And you considered that that would be relevant on the issues on this application, when you forwarded it to her via Detective Seguin, isn't that correct?

A: That's correct.

Q: You became aware two days ago, February 20th, that we, the defence, did not have that letter, correct?

A: That's correct.

...

Q: And until that point, until that conversation, it was your assumption that we, the defence, had been given exhibit 22, correct?

A: I couldn't say it was my assumption you'd been given it. All I knew is that I provided it to Ms Hallett.

Q: And you did so in the expectation that it would be disclosed?

A: Well, it would be her decision to do that.

Q: Right. When you became aware that we did not have it, you made personal efforts to acquire a copy of it to give to us, correct?

A: Yes, I went back and I searched her file and I couldn't find the exact copy and I instructed Constable Dupuis to go and look in the courtroom here and it couldn't be located and I further instructed him to go and get a copy from Ms Hallett and give to you.

Q: And your intention in looking for it, was to deliver it to us directly, correct?

A: That's correct.

Ms Hallett testified that she was "shocked" that this evidence was being led. She didn't understand the defence's reason for trying to introduce this letter at this point:

... [A]s I understood it, they were making an issue of a letter that I had not considered should be disclosed, especially after I had already told the Court on February 14th that I had these Dunlop notes and Will-Say since April of 2000.

According to Ms Hallett, there had been no discussion between herself and Project Truth officers about the need to disclose this letter.

Ms Hallett cross-examined Detective Inspector Hall and asked him if he was aware that she had informed the Court on February 14, 2001, that she had received the Dunlop materials. He responded that he was not in court that day, so she put to him some of the statements that she made to the Court. Ms Hallett testified at the Inquiry that it seemed to her that the evidence introduced was based on some misapprehension or misunderstanding by Detective Inspector Hall that she had not made the Court aware that she had received the Dunlop materials. She wanted to establish that Detective Inspector Hall was not aware that she had advised the Court that she had taken responsibility for the failure to disclose Constable Dunlop's notes and will-state.

According to Ms Hallett, at this point in the proceeding it occurred to her that the focus was shifting from wilful non-disclosure by police to wilful non-disclosure by the Crown. She admitted that she was starting to feel uncomfortable and probably should have stepped down or sought assistance. Had she been in Toronto she probably would have taken a break and asked someone from her office to come and make representations to assist her or give her counsel. Ms Hallett could not ask her co-counsel to take over, however, because she was junior and Ms Hallett was concerned that she would not be able to carry on with the rest of the trial.

As discussed above, in August 1999, when defence counsel Mr. Edelson indicated that she might be subpoenaed as a witness, Ms Hallett wrote a memorandum to James Ramsay requesting that Erika Chozik be assigned as her co-counsel in this matter.

Discussion With Officers After Court on February 22

After court on February 22, 2001, Ms Hallett was advised by Detective Inspector Hall that the defence did not intend to call Detective Inspector Smith as a witness. Ms Hallett testified that she was “astounded to hear” that the defence was dispensing with Detective Inspector Smith’s evidence. At that point, she confronted Detective Inspector Hall and suggested he was colluding with defence to set up the Crown for the fall on the stay application. She suggested there was an agreement that in return for some quid pro quo the police were no longer going to be the target of the application and the Crown was. Ms Hallett thought it was very obvious that there was a change in strategy based on the evidence of that afternoon and the fact that Detective Inspector Smith no longer needed to be called as a witness.

Ms Hallett thought Detective Inspector Smith was a critical witness and she would have called him to establish that he failed to disclose inadvertently. Ms Hallett did not call Detective Inspector Smith as a witness because she believed the defence had conceded that the non-disclosure was inadvertent. She thought the defence was not calling Detective Inspector Smith because the focus or target of their application was changing.

According to Detective Inspector Hall’s note of the conversation of February 22, Ms Hallett was upset and acting unprofessionally because evidence came out that did not please her. Detective Inspector Hall advised Detective Constables Dupuis and Seguin to stay away from her. Ms Hallett thought she was direct, but not unprofessional, with Detective Inspector Hall.

Final Submissions on Stay Application

Ms Hallett continued to call evidence on February 26, 2001, from the complainants who testified they had no contacts with Constable Dunlop. One of them did not even know who Constable Dunlop was.

On that date, the Crown and defence made final submissions on the stay application. According to Ms Hallett, in the course of final submissions by the defence, it became clear that the defence strategy had changed. According to her, the allegation of wilful non-disclosure by the police was now an allegation of wilful non-disclosure by the Crown. Although the defence were still making

an allegation of wilful non-disclosure against the police, Ms Hallett felt the defence's argument in relation to the officers was no longer their principal argument. She noted that when you compare the passage of the transcript about the officers with the passage where the defence are inviting the Court to make a finding against Ms Hallett, there is a dramatic difference.

Ms Hallett testified that there was no suggestion from the Court that she obtain counsel at that point. She wished Justice Chadwick had advised that he wanted to hear from her under oath about the inadvertence and her part with respect to the Constable Dunlop notes and will-state, as she would have gladly given evidence under oath. Ms Hallett said part of the reason she did not remove herself from the motion and request counsel was because she was not given notice that her conduct was going to be examined. She was aware the Court of Appeal addressed this issue of notice, which will be discussed below.

According to Ms Hallett, she only became aware explicitly that she was the target of the wilful non-disclosure on February 26, during the closing submissions.

Shelley Hallett's Comments to Detective Constables Steve Seguin and Joe Dupuis About Detective Inspector Pat Hall on February 26

Following the closing submissions, Ms Hallett, Ms Tier, and the Crown's articling student met with Detective Constables Seguin and Dupuis. According to Detective Constable Dupuis' notes, Ms Hallett was very upset with Detective Inspector Hall and stated that he went behind her back and gave the memo to the defence. The notes also state that Ms Hallett said she never wanted to see or speak to Detective Inspector Hall again and if she saw him now she would "scratch out his eyes." Detective Constable Dupuis testified that Ms Hallett was clearly angry that the charges were stayed and about Detective Inspector Hall's actions. This was the first time he had observed Ms Hallett make any comments about Detective Inspector Hall and the first time he was aware there were any ill feelings between them.

Detective Inspector Hall's notes say Detective Constable Dupuis told him that Ms Hallett was holding him responsible for giving the July 4, 2000, letter to the defence; that Ms Hallett said this was done because she was a woman and that this would not happen to Crowns Pelletier or Flanagan; and that she said she did not feel she could continue to work on the Father MacDonald trial.

Ms Hallett testified that hearing Mr. Skurka tell the Court that in order to provide disclosure to the defence the police officers had had to bypass the Crown led to the lowest moment in her professional career:

And for a counsel like myself who has prided herself on an honest reputation over 20 years, that was a devastating remark which I knew was not true.

...

I knew the police officers did not have to bypass me to make disclosure here. They had simply not spoken to me about it. And that is what caused me to go directly to the officers after this was over and tell them—tell Pat Hall to keep a wide berth.

Telephone Call Between James Stewart and Detective Inspector Pat Hall

On February 27, 2001, Detective Inspector Hall contacted Mr. Stewart and advised him of the events since February 7. The details of this call were covered in the previous section, but among other things, Detective Inspector Hall said that he did not think Ms Hallett could handle the Father MacDonald case based on his observations of her over the past two years.

I am of the view that the question was not whether she could handle the case but rather whether she should continue given the clear breakdown of the relationship between the Crown and the police. I think she was right in removing herself from the prosecution of the Father MacDonald case given what had just occurred in *R. v. Leduc*.

Decision of Justice James Chadwick

On March 1, 2001, Justice Chadwick granted the stay application, finding that Crown Attorney Hallett had wilfully failed to disclose material. Ultimately, costs were ordered against her in the amount of \$351,000. Following the ruling, Ms Hallett had a long meeting with the complainants and their families to explain what had happened and where things would go from there. Ms Hallett believed Detective Constable Seguin attended this meeting with her, as she always had an officer present.

Case Referred to Appeal Review Panel

The Ministry of the Attorney General has a process for determining whether to launch a Crown appeal of a decision. Ms Hallett was very familiar with the process because of her work with the Crown Law Office—Criminal.

First, the Crown responsible for the case prepares a Crown appeal checklist and a synopsis or background of the case, which is submitted to the local Crown attorney for approval. If the request is approved, it goes to a three-person panel which decides whether an appeal should be filed. The appeal review panel is

intended to provide an independent review. As part of that process, the panel members may consult with the Crown counsel involved in the case in order to obtain complete background information.

According to Ms Hallett, she completed the Crown appeal checklist and prepared a synopsis of what happened in *R. v. Leduc* and a list of proposed grounds of appeal. Mr. Stewart approved the Crown appeal request. He felt strongly that an appeal was necessary in this case.

The panel that evaluated the merits of the appeal in this case consisted of John Pearson, Lidia Narozniak, and Louise DuPont. This was Ms Narozniak's initial contact with the file. She explained that it was because of Ms Hallett's position with the Crown Law Office—Criminal that the review was sent to Crowns working outside that office. Mr. Pearson prepared the first legal opinion on March 18, 2001. Louise DuPont provided her opinion on March 23, and Ms Narozniak provided her opinion on March 26. Ms Narozniak explained that although three legal opinions are provided by the appeal review panel, the majority rules. The appeal will go forward if two or three of the panel members agree. In this case, it was a unanimous decision that an appeal should be filed. Although Ms Narozniak did not know if any of the written legal opinions were sent to Ms Hallett, she said the contents of the opinions were certainly shared with the trial Crown because the panel reports back to him or her about their decision.

Ms Hallett testified that it is very common for the appeal review panel to have questions for the trial Crown seeking the appeal and she made herself available in the event that the review panel required further information. There were a number of questions from the Crowns on the panel about various aspects of the case, and she prepared several memoranda in response to those requests.

A notice of appeal was served on Mr. Leduc on March 28, 2001, and Mr. Pearson was assigned to handle the appeal. Other than appellate counsel, Ms Narozniak was not aware of anyone else dedicated to the file during the period between the lower court decision and the appellate decision. Mr. Pearson handled the disclosure required during the course of the appeal. Although there was some file management throughout the appeal process, no Crown was preparing for the continuation of trial.

Shelley Hallett Makes Comments in Media

Shortly after the appeal was launched, Ms Hallett spoke with *Globe and Mail* reporter Kirk Makin. She was concerned by his report on the stay application and the fact that she was found to have wilfully failed to disclose. She felt that out of fairness, Mr. Makin should publish a piece on the fact that the decision was being appealed, which he subsequently did, on April 5, 2001.

Ms Hallett was admonished for speaking to the press about this matter. On April 5, Paul Lindsay sent Ms Hallett an e-mail indicating that he was concerned that she had not followed Crown policy of not speaking to the press about the correctness of a judge's ruling. Ms Hallett testified that it was not her intention to comment on Justice Chadwick's ruling. Rather, her concern was to have Mr. Makin report that the matter had been appealed. Ms Hallett acknowledged, however, that she erred in speaking too directly with the reporter about what had happened.

Ms Hallett discussed the matter with Mr. Lindsay. She explained her concerns and suggested that perhaps more could be done to advise colleagues and the public that an appeal had been launched. Ms Hallett testified that this is now the practice. If there is a finding against a Crown or if a Crown's conduct is criticized, the division advises colleagues whether there is an appeal and the status of the Ministry's follow-up on the issue.

E-Mail From Detective Inspector Pat Hall to James Stewart

On April 3, 2001, Mr. Stewart received an e-mail from Detective Inspector Hall. The e-mail began with a discussion of issues related to the disclosure of the Dunlop material. Then Detective Inspector Hall made some comments about Ms Hallett, which Mr. Stewart felt were quite serious:

What disturbs me most is Ms Hallett not being truthful with Skurka & Campbell on Feb 07, 01 when the[y] first asked about the Dunlop material in light of the fact that on Jan. 09, 01 I had a telephone conversation with Ms Hallett when she asked me about the Dunlop involvement in the Leduc matter and how the initial complaint came in. None of us knew about the 5 lines in Dupuis note book at that time. She certainly knew Dunlop made notes and his will say entry on the [C-16] conversations.

Mr. Stewart testified that this e-mail was not something he expected or requested from Detective Inspector Hall. He forwarded the e-mail to John McMahon, Director of Crown Operations, Toronto Region, and Mr. Pearson a few days after receiving it because they were involved in the appeal.

James Stewart Drafts a Response but Never Sends It to Detective Inspector Pat Hall

Mr. Stewart drafted a response outlining some of his concerns about the allegations in Detective Inspector Hall's e-mail. In particular, he pointed out that the

January 9, 2001, phone call between Detective Inspector Hall and Ms Hallett was not referred to in the officer's evidence on the stay application: "I now have some concerns after realizing that you didn't tell the court and this appears to be new information."

Mr. Stewart testified that this was significant to him because at that point Ms Hallett's knowledge was an important issue. It was canvassed a lot in the case and this phone call was never raised. This was the first time Mr. Stewart was hearing about this telephone call. Mr. Stewart believes he spent some time reviewing transcripts because of Detective Inspector Hall's e-mail.

According to Detective Inspector Hall, he had specific discussions with Ms Hallett on two occasions prior to C-16's mother testifying, about C-16's mother and Constable Dunlop being in touch with each other as noted in Constable Dunlop's will-state. The first was on April 17, 2000, when they met to discuss the recent disclosure by Constable Dunlop. The second was on January 9, 2001, during a telephone conversation in which they discussed a number of items including "the comments Perry Dunlop had made in his notes and Will State and the fact there was no evidence Perry Dunlop ever talked to the victims."

Detective Inspector Hall acknowledged, however, that there is no mention in his evidence on the stay application about either conversation with Ms Hallett. He also later conceded he did not specifically point out the will-state reference to Constable Dunlop contacting C-16's mother to Ms Hallett on April 17, 2000.

Ms Hallett testified that she had contacted Detective Inspector Hall on January 9, 2001, to discuss a number of issues. She wanted some information on Justice McKinnon, who had been assigned to the case. She was not from the jurisdiction and did not know much about him. Ms Hallett also wanted to make sure Detective Inspector Hall was comfortable with the decision to reduce the counts on the indictment to include only the counts of sexual exploitation so that consent would not be an issue at the trial. Ms Hallett also contacted Detective Inspector Hall because of a notice with respect to a challenge for cause and the questions the defence proposed to put to prospective jurors. Ms Hallett testified that she was surprised when she noticed that some of the questions pertained to Constable Dunlop.

Mr. Stewart also wrote in his draft e-mail that he had talked to Detective Inspector Hall a number of times during which Detective Inspector Hall did not indicate any problems he had with Ms Hallett:

As you are aware after the stay of proceedings on the Leduc matter I asked you if there was anything else and you said no. In addition on, I believe, two separate occasions you indicated to me that you would have no trouble if Ms Hallett were to be the Crown to decide whether

charges are to be processed for the five remaining potential accused and the possible conspiracy charge. As you will recall we spent part of a day in Kingston reviewing in a global way those matters.

Finally, Mr. Stewart requested that Detective Inspector Hall prepare a supplementary witness statement accompanied by any notes made at the time and asked specifically that Detective Inspector Hall include all details of the January 9, 2001, call. Mr. Stewart said he anticipated sending the e-mail to Detective Inspector Hall and asking him to do this. He then realized, “a sort of sober second thought,” that he would end up in the middle of the situation. Mr. Stewart knew somebody was going to have to look into this matter, but he did not think that should be his role. Mr. Stewart never sent this draft response to Detective Inspector Hall because he was concerned that it would appear that he was attempting to persuade Detective Inspector Hall to change his mind about what he said.

Because Mr. Stewart knew somebody was going to have to look into this matter, he “passed it up the line” by forwarding his draft to Murray Segal, Assistant Deputy Attorney General, Criminal Law Division. Mr. Stewart testified that there was no doubt what he was going to do with this e-mail because both Detective Inspector Hall and Ms Hallett were senior people, it was a serious allegation of misconduct by the Crown, and Justice Chadwick’s ruling was on that very point. Although Mr. Stewart was aware there was going to be an investigation, the decision to have an external police force investigate Detective Inspector Hall’s allegations was not his.

Murray Segal Forwards E-Mail to York Regional Police, Which Begins an Investigation

Mr. McMahon forwarded the April 3 e-mail from Detective Inspector Hall to Mr. Segal on April 9, 2001. Mr. Segal testified that he probably spoke with Mr. McMahon, Mr. Stewart, and perhaps others about this e-mail. After receiving the e-mail, Mr. Segal reflected on it and sought outside legal advice.

Mr. Segal testified that he made the decision to refer the matter to an outside police force for such action as they deemed appropriate, which could include conducting an investigation. Mr. Segal stated it would be wrong for him to ask someone to begin an investigation because police make those decisions. In addition, people might think that because Mr. Segal is a person with higher rank, this should be done.

Mr. Segal contacted the York Regional Police and gave them a copy of the e-mail from Detective Inspector Hall. He advised Ms Hallett that he had given the e-mail to the York Regional Police and that she would be provided

with counsel of her choice during any investigation that might be conducted. Mr. Segal believes he may also have informed someone in the superior ranks at the OPP about what he had done.

Ms Hallett recalled that on April 23, 2001, Mr. Segal came to her home. He told her he had received an e-mail from Detective Inspector Hall and provided her with a copy. He explained that as a result he had to request a criminal investigation into her conduct and that she would be provided with counsel of her choice. This was the first that Ms Hallett knew of Detective Inspector Hall's e-mail. She also received a call from a representative of the Law Society who advised they were opening a file and that a further investigation was possible. There were no constraints put on Ms Hallett's work at the time.

Shelley Hallett Prepares a Number of Summary Documents Responding to Concerns Raised During the Investigation

Ms Hallett prepared a document in response to Detective Inspector Hall's e-mail. This document outlines some of the reasons for her discussion with Detective Inspector Hall on January 9, 2001, which is discussed above. She notes that Detective Inspector Hall confirmed that Constable Dunlop had not been involved in the official police investigation of Mr. Leduc. According to Ms Hallett, Detective Inspector Hall had confirmed that C-16's complaint had been brought forward because of his mother speaking with a friend, who in turn spoke with an OPP officer.

An investigator from the York Regional Police sent a letter to Ms Hallett's counsel on June 14, 2001. The letter stated that a number of issues were going to be discussed during Ms Hallett's interview, including:

- Lack of preparedness for Court
- Over interviewing of witnesses
- Overall poor working relationship with the "Project Truth" investigators
- Investigative Log having been entered into evidence
- Testimony of Pat Hall re—February 14th, 2001.

Ms Hallett testified that she believed she was being investigated for attempting to obstruct justice based on the content of Detective Inspector Hall's e-mail. She was "quite taken by surprise" when these five additional issues were raised, which did not seem to relate to the criminal investigation or the attempt to obstruct justice. She did not know that the police would be investigating these additional issues and felt that they were exceeding their mandate. Ms Hallett was advised of these issues only the day before the interview. I am of the view that the York

Regional Police did not have jurisdiction to examine those other issues, which were not criminal matters.

Ms Hallett prepared a response for each item in the letter. She prepared a document regarding competency, in which she outlined her experience. She testified that she had never been challenged on the issue of competency. She prepared a document regarding preparedness for court, in which she outlined the way she prepared for her Project Truth cases.

A third document dealt with her working relationship with Project Truth officers. She noted that she always travelled to Cornwall and never required that the officers come to Toronto to meet with her. She also stated that they shared many meals and generally spent a lot of time together, including attending witness interviews together. Ms Hallett testified that she felt there were good lines of communication between her and the officers. She listed, as an example, the fact that Detective Constable Dupuis had a trip planned and would forfeit his deposit if he did not receive a subpoena. Ms Hallett therefore attended court and obtained a subpoena for him. Ms Hallett thought they were a good team:

We were different people, there's no doubt about it, from different backgrounds, but we were coming together for a common cause and I frankly enjoyed working with these officers, all of them, and I thought that they enjoyed working with me.

Ms Hallett prepared a fourth document regarding the issue of over-interviewing witnesses, in which she provided some details about the interactions she had with witnesses in the Leduc matter. According to Ms Hallett, Project Truth officers never raised with her any issues they had about her approach with witnesses. She felt she and Detective Inspector Hall had an open relationship and he could have brought this up with her. Detective Constable Seguin told officers of the York Regional Police that he had a concern that Ms Hallett interviewed witnesses too many times. She testified that Detective Constable Seguin never said to her that one of the most serious issues in the Leduc matter was her inability to leave witnesses alone and that she continued to meet with victims even if they did not want to. Ms Hallett said she was aware that the “young men did not relish the prospect of talking about this very intimate and intrusive subject matter” with her but she felt it was her duty to prepare them for court. She also had a duty to the Court to prepare the witnesses to testify in a way that would assist the Court “to discover the truth.” Ms Hallett further explained that in this case there was two dates set for the preliminary inquiry and they were sufficiently far apart. As a result, there was good reason for the victims to refresh their memories, as they would be vigorously cross-examined on their prior statements.

Although Ms Hallett acknowledged that re-victimization is an important issue, she stressed that witnesses need to be prepared. Her understanding of re-victimization is too many representatives from too many institutions re-interviewing witnesses, and she sees preparation for court as a different issue. She thought the victims in the Leduc case were young adults capable of long and more complex interactions with her. Ms Hallett testified that she tried to minimize the intrusiveness by dividing the interviews into two parts. During the first interview, she met the complainants and answered questions, and during the second, she talked about the subject of the complaint. She said part of the purpose of these meetings was to make her available for questions and to make the complainants comfortable with her, as she would be asking them questions in court.

Finally, Ms Hallett prepared a document about the failure of the police to communicate with her, in which she discussed Detective Inspector Hall's failure to discuss with her his concerns about disclosing the July 4, 2000, letter. She set out a number of instances when she believed there could have been some communication about this issue. According to Ms Hallett, if Detective Inspector Hall had brought this up with her, she would have been willing to disclose the document or to explain the admission she had made to the Court on February 14, 2001, following which he may have understood that it was not necessary for the letter to be disclosed.

Interviews by York Regional Police

The York Regional Police interviewed Ms Hallett on June 15, 2001. She said she was never provided with a copy of her statement. Ms Hallett testified that one of the officers clarified at the outset of the interview that based on the information he had received, they were not looking at criminal charges. Ms Hallett responded that this was the first time she had heard this. She went to the interview thinking she was being investigated for an attempt to obstruct justice. She characterized it as a "harrowing experience."

The York Regional Police interviewed a number of other individuals from the Ministry of the Attorney General as well as the Project Truth officers. When Mr. Stewart was interviewed, he gave the investigators the draft e-mail he had prepared in response to Detective Inspector Hall's April 3, 2001, e-mail. He said that constituted his statement because that was all he knew at the time.

Shelley Hallett Writes to Detective Sergeant Denise LaBarge

On July 7, 2001, Ms Hallett wrote a letter to Detective Sergeant Denise LaBarge, one of the York Regional Police investigators. Ms Hallett said she wrote this

letter because she was concerned that the investigation appeared to be directed toward establishing that there had been a communication breakdown between the Project Truth officers and Ms Hallett, which explained or justified the actions of the officers on February 20, 2001.

Ms Hallett did not believe there had been any communication breakdown between herself and the officers, and she felt this was an improper characterization of their relationship. She stated that it was her firm position that Detective Inspector Hall's after-the-fact complaint of April 3 was nothing more than an attempt to divert scrutiny away from the police actions that led to the stay of proceedings in *R. v. Leduc*.

In this letter, Ms Hallett noted that Mr. Stewart's attendance in Cornwall provided an excellent opportunity for Detective Inspector Hall to take up the matter of the disclosure of the July 4, 2000, letter with another senior Crown. She further wrote that Detective Inspector Hall was well acquainted with Mr. Stewart, as evidenced by the familiar tone in the April 3 e-mail to "Jim."

Mr. Stewart testified that he knew Detective Inspector Hall only from the Project Truth investigation and never socialized with him. Mr. Stewart confirmed he was never informed by Detective Inspector Hall that he was planning to disclose the July 4 letter to defence counsel.

York Regional Police Investigation Concluded

The York Regional Police Investigation concluded that all persons interviewed, including Detective Inspector Hall, were of the opinion that Ms Hallett would not intentionally withhold information from the defence. It was the opinion of the investigative team that there was no basis for criminal charges against Ms Hallett for wilful non-disclosure of material to the defence in the Leduc matter.

Mr. Segal received a copy of their report.

Murray Segal Denies Shelley Hallett's Request for a Copy of Police Investigation

During the months of December 2001 and January 2002, Ms Hallett requested a copy of the York Regional Police Investigation from the Ministry of the Attorney General. Mr. Segal advised her that he would not provide a copy of the brief because he was concerned that it might have a potential impact on future proceedings. Mr. Segal testified that prior to advising Ms Hallett of his position he obtained legal advice from a retired jurist.

According to Mr. Segal, police briefs are confidential, and he would not provide a brief to any member of the public. In his view, the fact that the person

asking was an employee of the Ministry would not give her any different status. Mr. Segal said he sought outside advice in addition to considering the human resources implications of this kind of request. He also considered the issues that Ms Hallett raised and got some input from counsel involved in the appeal.

On October 18, 2002, Ms Hallett renewed her request for access to the York Regional Police materials because counsel for Mr. Leduc was trying to bring fresh evidence on the appeal from some of those documents. Ms Hallett was concerned that she should retain legal counsel and obtain the results of the investigation and lead that evidence in the appeal on her own behalf. Again, she was not given the material. Mr. Segal recalls a second request by Ms Hallett to receive the report. He said he would have consulted with Mr. Pearson and perhaps others and his conclusion was the same—he would not release the investigative brief to Ms Hallett.

Mr. Segal did not believe Ms Hallett should be given the brief simply because she was a Crown counsel or a Ministry employee. He asked how that would square with the fact that if a member of the public asked, for example, for the investigative brief in relation to his neighbour who was investigated and not charged, the request would be denied. Mr. Segal said he tried to approach this in a way that would not show favouritism, be sensitive to Ms Hallett's needs and issues, and at the same time resemble the normal course of action if any member of the public made the same request: "I'm absolutely convinced I would be the recipient of criticism by giving an employee a brief by reason of, as you say, they're not just any person; they're an employee."

Garry Guzzo Requests Information From Shelley Hallett

On October 18, 2001, MPP Garry Guzzo requested some information about the Leduc matter from Ms Hallett, and she asked that he put his request in writing. He complied, sending her a letter asking whether or not the questions for prospective jurors were ever approved by Justice McKinnon and if so, whether and how many times Constable Dunlop's name appeared in those questions. Ms Hallett wrote to Mr. Segal to seek instructions from him about responding to Mr. Guzzo's questions. Ms Hallett testified that her involvement ended with this memo. She expected that Mr. Segal or someone would respond to Mr. Guzzo.

Mr. Stewart was tasked with responding to Mr. Guzzo. In his letter dated October 31, Mr. Stewart advised that because the matter was currently before the courts it would not be appropriate to comment. Mr. Stewart testified this is a standard response because many times the Crown does not have the luxury of commenting or answering questions.

***Justice James Chadwick's Decision Overturned by Court of Appeal;
Leave to Appeal to the Supreme Court of Canada Denied***

On July 24, 2003, the Ontario Court of Appeal overturned Justice Chadwick's decision. The Court found that the "Crown misconduct on which the stay was based is not supported by the evidence." Nonetheless, the Court noted that the notice given to Ms Hallett that her conduct would be examined was far from ideal but was adequate. The Court stated that the Crown should not be permitted to raise the adequacy of the notice on appeal for three reasons:

First, from the beginning of the hearing of the stay application, Ms Hallett seemed aware of the allegation against her and prepared to respond to it.

...

Second, and more important, Ms Hallett did not object to the adequacy of the notice she was given. At no time during the stay, even during closing arguments when there could have been no doubt about Leduc's position, did Ms Hallett ask for an adjournment, ask for the opportunity to get advice from another lawyer, or even say that the allegation had taken her by surprise.

...

Finally, whether notice is reasonable or adequate must be assessed in the context in which it is given. Here Ms Hallett participated in the stay hearing without objection.

Ms Hallett testified that given the evidence that had been called from the officers and the minimal evidence of prejudice, she did not recognize that she was in jeopardy. She said this is consistent with something Mr. Stewart once told her—that the conflict of interest is invisible to the person who is involved in it. Ms Hallett testified that she would have appreciated a heads-up from defence counsel, whom she had known for many years. She reiterated that the jeopardy only seemed to be explicitly conveyed in the course of final submissions by defence counsel on the stay application.

As I found in Chapter 7, Detective Inspector Hall was wrong to give the July 4, 2000, memo to defence counsel without discussing the matter with Crown Hallett. I also recommended that there should be a protocol in place within police forces with respect to how to deal with disagreements between police officers and Crown counsel about disclosure. In this case, Detective Inspector Hall should have advised his supervisor of his concerns. His supervisor could then have discussed these concerns with Ms Hallett's superiors in the Ministry of the Attorney General.

Although Ms Hallett was responsible for some delays in disclosure and the preparation of Crown briefs, I believe she is a dedicated and competent professional whose compassion and expertise in dealing with alleged victims of current and historical sexual abuse made her an asset to the Project Truth team. The debacle in the Leduc matter affected her profoundly both professionally and personally. In addition, it is extremely unfortunate that it caused her to be removed from other Project Truth cases, especially the prosecution of Father MacDonald.

R. v. Jacques Leduc Retrial

Lidia Narozniak Assigned New Jacques Leduc Trial

In the fall of 2003, John Pearson asked Lidia Narozniak if she would be interested in prosecuting the retrial of Jacques Leduc, and she agreed to do so pending the Supreme Court of Canada's decision on the appeal. Leave to appeal to the Supreme Court was denied on January 12, 2004, and the trial in *R. v. Leduc* proceeded again. Ms Narozniak was relieved of most of her other files in order to take on this prosecution. I note that she was working almost exclusively on the Leduc matter, whereas Shelley Hallett had a number of files while working on the Leduc matter. In hindsight, Ms Hallett was overburdened.

In consultation with Mr. Pearson, Ms Narozniak decided in January 2004 that she would review the entire Project Truth file. Ontario Provincial Police (OPP) Detective Inspector Colleen McQuade sent an e-mail to Detective Constable Don Genier and others to this effect on January 22:

In essence, what Lidia needs to do is review ALL information, every piece of paper, that has ever been obtained and harboured within the confines of Project Truth. (not just the Leduc file) It is not that we are not trusted to deliver up ALL documents of relevance, it is that to objectively review the entire matter, Lidia is tasked with having to review EVERYTHING herself, so as to instil total confidence in the courts that NOTHING is outstanding.

Ms Narozniak testified that because of the oversight on a relevant piece of disclosure in the first trial, she thought it prudent to ensure that all the material was reviewed again. This was especially important since Perry Dunlop was connected to the case. She wanted to ensure they didn't miss any other relevant disclosure. Ms Narozniak's goal was to ensure that the trial proceeded on its merits.

Detective Constable Genier responded to Detective Inspector McQuade's e-mail:

It's sad to say, but I see that as a result of the first trial, the ATTORNEY GENERAL'S OFFICE are aiming at not working together on this file with the O.P.P. and I don't see that as a good thing.

Ms Narozniak's view was that Detective Constable Genier misunderstood the purpose of her review of the material. She believed that he was still affected by what happened during the first trial, and that he thought she was evaluating the police work when in fact she was ensuring that her Crown obligation of disclosure was fulfilled. She said, "It was a misunderstanding that was quickly resolved."

Ms Narozniak testified that the first hurdle she faced in the Leduc matter was the issue of delay and section 11(b) of the *Charter*. She felt the Crown had been tardy in some of its disclosure obligations, which caused some delay in the case. Even excluding the Dunlop disclosure issues, there was significant delay in Crown disclosure, which could have compromised the case.

Adjournment Hearing

On February 19, 2004, Ms Narozniak made her first court appearance on the Leduc matter. The case was scheduled to proceed on May 10. Ms Narozniak's instructions were to be ready "no matter what, at whatever date" to ensure a speedy trial. The Court was advised on February 19 that counsel would not be ready for that time, so another date was to be scheduled. Defence counsel, Marie Henein, made submissions to the Court about the need for an adjournment of the trial date:

The matter covers some, in my office, at least 20 boxes and I believe Ms Nerozniak's [sic] file is growing as we speak. And we both have to engage in an extensive review of the file. It's for that reason that neither of us are in the position to proceed in May.

Ms Narozniak testified that in discussions with defence counsel, she had acknowledged some of Ms Henein's comments about there being a lot of material involved and that the case was more complicated than initially anticipated. She believes these comments led Ms Henein to assume there was a joint request for an adjournment:

And with that, I believe Ms Henein assumed it was a joint request. I was ready for trial at any time, but since the time from May to October did not count due to an 11(b) waiver, I didn't bother saying anything.

Ms Narozniak advised the Court that there was a possibility of a delay motion but defence counsel had agreed there would be a waiver for the delay between May and the new scheduled trial date.

Ms Narozniak did not object to defence counsel's submission about the need for an adjournment, although her position was that she would be ready to proceed on May 10. I am of the view that it would have been appropriate for Ms Narozniak to state for the record that the Crown was prepared to proceed on the set date. The Crown should be seen as being interested in matters proceeding to trial as quickly as possible. In addition, it is important that the position of each party is made clear at the time of the adjournment to ensure that any judge reviewing the conduct of the trial in the future can properly assess the situation.

The trial was scheduled to begin in October 2004.

Transfer of File to Lidia Narozniak and Her Review of the Material

Ms Narozniak began receiving disclosure from Detective Inspector McQuade shortly after her assignment to the case in January 2004 and continued receiving material from the OPP in the following months.

On May 19, Ms Hallett sent a memo to Ms Narozniak and Christine Tier with four boxes of materials on the Leduc matter. She wrote that she believed the materials had been disclosed to the defence. Ms Narozniak testified that she agreed with Ms Hallett's opinion that there was no outstanding disclosure at this point. On May 22, Ms Hallett sent an e-mail to Ms Narozniak saying that further boxes were being provided to her and that she would then have all of the material. Ms Hallett explained in the e-mail why there was a delay in getting the file to Ms Narozniak:

In view of all of the circumstances in this case, I needed to take the time to organize and inventory the brief and the Dunlop materials and make sure the four volumes of the correspondence file (which documents all of the disclosure that was made to Leduc's counsel) was complete and in order so that I could protect myself professionally.

...

There simply has not been any time since Christmas to get the Leduc file to you in proper order.

Ms Hallett outlined some of the other work she was doing at the time, saying that she had felt "very jammed professionally," which is why Ms Narozniak had not received the Leduc materials earlier. Ms Narozniak testified that she did not

know if she had any discussions with Ms Hallett about disclosure issues after this. She was satisfied with the e-mail.

Ms Hallett did not know when she was asked to turn over the materials. She acknowledged it took some time to prepare the description of the content of the boxes. She was concerned about the previous allegations of impropriety and wanted to make sure everything was handed over and that there would be no basis for allegations that she withheld material. Despite the finding of the Court of Appeal, Ms Hallett was still concerned that such an allegation could be made.

This matter was to commence on May 10, but it was not until May 19 that Ms Hallett completed the transfer of all relevant materials to Ms Narozniak. I fail to understand why Ms Hallett was still in the possession of those boxes three years after the end of her involvement in the file. The Ministry of the Attorney General should have arranged to retrieve that file from Ms Hallett. This is especially problematic given that disclosure was a difficulty in many of the Project Truth prosecutions. I have previously commented that prosecution files should remain in the possession of the Ministry of the Attorney General. Crown counsel should not be permitted to retain possession or control of any files when they are no longer involved with the prosecution. I appreciate that Ms Hallett had concerns as a result of the allegations made against her in the Leduc matter and the resulting investigation by the York Regional Police. In my view, this is a further reason why Ms Hallett should *not* have retained the file.

On May 12, 2004, Ms Narozniak attended defence counsel's office and they did a document-by-document comparison of the Dunlop materials to ensure everybody was working from the same materials. They discovered that there were some documents missing. As a result, Ms Narozniak arranged for defence counsel to attend at the Cornwall police station to review the original boxes.

On May 17, Ms Narozniak requested the originals of Constable Dunlop's duty notebooks from Cornwall Police Service (CPS) Staff Sergeant Garry Derochie. According to Ms Narozniak, Crown counsel were finding it difficult to understand the sequence from one duty book to another and had also determined that one of the duty books was missing in its original form. The copy they had showed some gaps. The Crown felt the original material would be more helpful than the copies.

At the end of May, Ms Narozniak and Detective Constable Steve Seguin attended at the CPS office and went through the nine boxes of Dunlop material. They were of the view that material was still missing. In particular, they discovered that an original police binder containing notes by Constable Dunlop, as well as his final police notebook, had not yet been provided. They discussed the possibility of a search warrant for Mr. Dunlop's house but one was never obtained. Ms Narozniak explained that Mr. Dunlop would be subpoenaed as part of the

disclosure motion, and the subpoena would identify the materials required. She was also going to talk to him and she hoped he would cooperate and bring the materials in.

Defence counsel attended CPS to review the boxes on June 21, following which they requested that certain original documents be brought to court.

Ms Narozniak testified that at the end of her review of the Dunlop material she was not satisfied that he had fully disclosed all of his information or contacts. She did not go to the CPS to advise them of these concerns or to make a formal complaint.

It is unclear to me why so much emphasis was placed on the Perry Dunlop materials and concerns that he did not disclose everything. Ms Narozniak was not confident that the Crown and the defence were working from the same materials. This appears to me as being a problem resulting from not having a tracking system of what was disclosed to the defence. Those nine boxes of materials were within the control of the investigators and the prosecution and yet they had not been copied and disclosed to the defence. In my view, this was not a problem caused by Mr. Dunlop but rather a Crown disclosure problem, as noted elsewhere in this chapter. Mr. Dunlop made some mistakes and contributed to some of the difficulties in these prosecutions. However, the Crown was by this time aware of most of these difficulties and should have had better systems in place to deal with them.

Disclosure Motion—Perry Dunlop Called As a Witness for the Crown

One of the pre-trial motions brought by the defence in this case was a disclosure motion, which was heard over several days in August 2004. Ms Narozniak explained that the purpose of this motion was to explore whether there was any undisclosed material missing or in Mr. Dunlop's possession or in the Crown's possession. The motion would also examine the potential contact that Mr. Dunlop might have had with the victims in the case. The Crown called Mr. Dunlop as a witness. This was not at the request of the defence, as the Crown was equally interested in explaining Mr. Dunlop's involvement in the Jacques Leduc case.

Although this was technically a defence motion, Ms Narozniak explained that the onus is on the Crown to ensure disclosure has been fulfilled, and that is a significant factor in deciding whether it is pragmatic for the defence or the Crown to call the evidence. Ms Narozniak testified that she was confident that Mr. Dunlop would not be cooperative and would likely be hostile. As a result, even if the defence called Mr. Dunlop as their own witness it would probably turn into a situation where Mr. Dunlop would be declared a hostile witness, and defence counsel would then be in a position to cross-examine her own witness. Under the circumstances, Ms Narozniak thought it was more pragmatic for the Crown to call the evidence first.

Mr. Dunlop was living in British Columbia at the time and was summoned to attend. Prior to the motion, Ms Narozniak had a few phone conversations with him about his attendance. She explained the motion to him, outlined the issues, and identified areas of concern. She directed his attention to his previous testimony in the Father Charles MacDonald case and said that her approach would be very similar. Ms Narozniak also sent him the transcripts from his testimony in the Father MacDonald case. She testified that Mr. Dunlop was very reluctant to come in early to discuss the motion. There was no discussion of her travelling to Vancouver. Mr. Dunlop insisted on coming to Cornwall the night before he was to appear in court. Ms Narozniak did not meet him prior to his testimony, although they spoke by phone.

Ms Narozniak testified that she was aware that Mr. Dunlop maintained she had no contact with him and she disagreed:

The context within which we had our discussions were unique, in that Mr. Dunlop was not a cooperative witness or cooperative individual in terms of coming to Cornwall. At the outset, my dealings with Mr. Dunlop focussed on addressing his concerns. He was providing numerous obstacles to his attendance in the first place that I needed to accommodate and try to convince him that I was doing everything I can to minimize his visit to Cornwall.

According to Ms Narozniak, she spoke to Mr. Dunlop about his notes and the need for the originals, and explained which notebooks she was interested in. She informed him that the focus of her questioning would be on his contact with the complainants and witnesses in the Leduc case. According to Ms Narozniak, the issues she wanted to canvass with Mr. Dunlop were straightforward. For these kinds of issues, she would not have expected to have had a long preparatory interview with him in advance of testimony.

Ms Narozniak did not discuss with Mr. Dunlop any protection against self-incrimination under the *Canada Evidence Act* before he testified. She thought he knew about it. She did not offer or suggest that Mr. Dunlop receive independent legal advice. From her reading of the prior testimony, it was clear to her that he was “keenly aware” of his ability to consult counsel. Ms Narozniak was satisfied that Mr. Dunlop, as a professional witness given his prior experience as a police officer, was very much aware of what options were available to him. In addition, he had a lawyer, Yvonne Pink. The fact that Mr. Dunlop was a “professional witness” appeared to factor heavily in Ms Narozniak’s mind with respect to how much preparation he required:

It is most unusual to spend a lot of time with veteran police officers in preparation of routine cases because they have been trained, they're familiar with the process, they are likely to have testified before. That's the kind of preparation you'd normally leave with a civilian witness.

Although I agree that a police officer will generally require less preparation before being called as a witness, it must be kept in mind that Mr. Dunlop had not been a police officer for the last four years. This was not a routine court appearance to which a police officer might be accustomed. Under the circumstances, Mr. Dunlop required more preparation than a typical "professional witness." However, I also do appreciate the difficulties the Crown had in securing his cooperation for his attendance on the motion. Mr. Dunlop's position was that his band had a performance scheduled for the weekend before the motion, which is why he was unable to come in advance. It is unfortunate that he chose not to testify at the Inquiry. Why this was so important for him is one of the many areas I would have liked canvassed with him.

Ms Narozniak also had some preconceived notions about Mr. Dunlop based on her review of the Father MacDonald and Marcel Lalonde cases:

This was a witness that continued to persist in contacting victims and witnesses, contrary to direct orders by his superiors. This was a witness who has been described as being over-zealous, to use one description, in his approach to investigating and contacting victims and witnesses. This is a witness that has been described as being one who pushed victims to come up with certain evidence and, in fact, there were allegations that he counselled them to falsify their testimony resulting in the withdrawal of counts. This was absolutely critical information, in my view, and put him in a totally different situation. And, finally, this is a witness who clearly was not truthful while under oath. This is a witness that you have to approach with extreme caution.

On August 16, 2004, Mr. Dunlop was called to the stand to testify. He took the position that he had only received the transcripts a few days before he left British Columbia and therefore he had not had sufficient time to review them. Ms Narozniak stated at the Inquiry that the issue of Mr. Dunlop not feeling prepared was not raised with her prior to his testimony. Ms Narozniak's examination took the morning to complete. She said that she was actually leading Mr. Dunlop in order to get through the information quickly. While using this approach, she felt he was reasonably responsive to her questions.

Mr. Dunlop was cross-examined by defence counsel for three days. Ms Narozniak did not object to any of the questions defence counsel put to him. Although the Judge intervened and asked for clarification on certain points, these were not points where Ms Narozniak could have intervened. As she explained, unlike the Judge, she was aware of all of the material. In addition, most of the interventions were accompanied by an acknowledgment that counsel was conducting a proper cross-examination.

On the second day of the disclosure motion, Mr. Dunlop requested legal counsel. Ms Narozniak supported that request and asked the local Crown's office to assist her in connecting with a legal aid lawyer or duty counsel in the building. Duty counsel was contacted and Mr. Dunlop spoke to him and was prepared to proceed with his testimony.

On the third day of testimony, a statement prepared by Mr. Dunlop was put in as evidence, in which he stated he felt he was being treated unfairly, had been blindsided, and was subpoenaed under false pretences. In his statement, he said he thought he had been called solely to address the contact he had with C-16's mother. He felt the two days of testimony had been a "well-orchestrated attack" on him and that the Crown had acted unfairly and provided him no guidance or assistance. Ms Narozniak testified that the statements made by Mr. Dunlop were contrary to the advice she gave him as well as the issues she directed to his attention. In particular, she specifically had a discussion with him about the notebook issue and mentioned the concern about other materials he may have in his possession.

Ms Narozniak did not re-examine Mr. Dunlop, as most questions had already been asked. In the initial wilful non-disclosure motion, Ms Hallett had the victims testify about having no contact with Mr. Dunlop. Ms Narozniak testified that the disclosure motion was not a test of Mr. Dunlop's credibility but a motion to elicit disclosure materials. This was not the proper forum for her to call complainants to verify Mr. Dunlop's testimony:

In fact, I certainly would not have considered forcing victims to testify at a pre-trial motion for disclosure and then have them come back for trial. That would be highly insensitive on my part to do so.

Ms Narozniak testified that she was aware there was a perception that she had not done much to oppose the defence efforts in the Leduc matter. She believed that was the perception because of Mr. Dunlop's actions and behaviour during the course of his testimony on the pre-trial motion.

Section 11(b) Application for a Stay of Proceedings

In the fall of 2004, the defence brought an application for a stay of proceedings based on delay. Ms Narozniak was not surprised there was a section 11(b) *Charter*

application. Her position, however, was that the best interests of the administration of justice were served by having Mr. Leduc's trial proceed on the merits and this remained her position throughout. Part of her task on the section 11(b) application was to explain to the Court that regardless of the prejudice to Mr. Leduc, there would be a greater prejudice in having the matter stayed.

Ms Narozniak attended a meeting with senior Crown counsel in order to brainstorm a response to the section 11(b) motion. In preparation for that meeting, she prepared a memo and attached a disclosure timeline and a document entitled "Top 6 Disclosure Problems from the Crown." The memo discussed a number of issues, including delay both before and after the preliminary hearing, the Crown's argument, and the merits of the case. The issue of delay was considered in some detail in the previous section of this chapter. As discussed there, the first five of the six disclosure problems listed related to disclosure by the former Crown, Ms Hallett. According to Ms Narozniak, they spent a lot of time preparing the timeline and identifying when disclosure was given. Ms Narozniak explained that regardless of the reason or who is at fault, when there are issues with disclosure and delay in providing disclosure it rests with the Crown. She acknowledged that five of the six reasons on this list would lie at the feet of the Crown.

As discussed earlier, Ms Hallett conceded responsibility for some of the delay and acknowledged that errors on her part led to some of the delay. However, she did not accept that all of the disclosure problems should fall at the feet of the Crown nor that they were all in fact disclosure problems.

The applicant's factum was lengthy. The Crown prepared a fifteen-page factum in response. Ms Narozniak testified that she and Ms Tier knew this was a critical motion for them and they spent a lot of time researching and discussing the issues. They called upon senior experts in the field of section 11(b) and appellate argument to discuss the best approach for the Crown's response. The decision was made to focus on their best argument. Ms Narozniak testified that a factum does not have to be lengthy. I agree. The applicant has to set out the facts, which don't have to be repeated by the respondent, if the respondent agrees with them.

The Crown agreed with the applicant's statement of facts. Ms Narozniak agreed, however, that a concession on the facts does not mean that the subsequent inferences the Court is being asked to draw are accepted. One of the things the Crown agreed to was that the connection of Mr. Dunlop to the case was discloseable and significant. Ms Narozniak testified that Ms Hallett's submission on February 14, 2001, about the notebook entry informed this particular concession. Further, Ms Narozniak testified that the Crown discovered that there was far more contact than initially thought between Constable Dunlop and the witnesses, because it was not just Constable Dunlop himself that they were looking at:

Mr. Dunlop, by his own testimony, asserted that he had a team, so to speak, of people that assisted him in examining or interviewing witnesses, including his wife, Helen Dunlop, and his brother-in-law, particularly Carson Chisholm. And it was through Carson Chisholm's evidence that we discovered how much more contact there was with the complainants' parents. Given the age and the living situation of the majority of the complainants, the contact with parents was as equally relevant as direct contact with the complainants alone.

In a memo to senior Crown counsel, she raised the concern that Constable Dunlop may have tainted witnesses in the Leduc matter. This "Dunlop connection" led the Crown to concede that the Dunlop material was relevant and had to be disclosed in its entirety, thereby resulting in the Crown having to assume responsibility for the delay "caused by the exploration of the Dunlop issue."

The argument put forward by the Crown was that the defence was barred from arguing section 11(b) because it had not been raised at the first trial. According to Ms Narozniak, this was thought to be the Crown's best argument. However, in the memo prepared regarding the section 11(b) motion (discussed above), Ms Narozniak wrote that she felt confident that the Court would be tempted to reject the foreclosure argument the Crown presented because the defence had a highly meritorious section 11(b) application.

In addition to the "uphill" battle the Crown was facing in the section 11(b) application, Ms Narozniak also had concerns about the merits of the case itself and, in particular, concerns about the credibility and reliability of the complainants. With respect to C-16, she felt the Crown could not obtain a conviction at trial and she would have considered withdrawing the charges in respect of his allegations.

Moreover, the potential that Constable Dunlop tampered with witnesses would have cast doubt even where there were highly credible witnesses:

... [E]ven if you had the complainants clearly state there's been no contact, this was clearly going to be fleshed out during the course of the trial if we survived 11(b). There was definitely going to be much evidence elicited around the contacts, the meetings and so on that we discovered during the disclosure motion.

Stay Granted by Justice Terrence Plantana

On October 18, 2004, Justice Plantana granted the defendant's application to stay the proceedings on the basis that he had not been tried within a reasonable time, contrary to his rights under section 11(b) of the *Charter*. The written judgment was provided on November 10.

Justice Plantana held that there was no implied waiver by the defence of the accused's section 11(b) rights by virtue of the fact that the 11(b) issue was not raised during the first trial and that, therefore, the defence was not precluded from raising the issue now. On the issue of delay, Justice Plantana said the following:

The Respondent acknowledges that most of the pre-trial delay resulted from delayed disclosure and that responsibility for this delay must rest at the feet of the Crown. Similarly, Ms Nerozniak [sic] accepts that the Crown must also accept responsibility for the delay that would have resulted from the mid-trial discovery of the Dunlop connection.

In view of the position taken by the Crown and in view of the determination that I have made earlier that any delay in this case begins from the date of the laying of charges I am certainly satisfied that any delay in this matter must be attributable to the Crown.

Regarding the issue of Constable Dunlop's connection to the case, Justice Plantana concluded that his contact with the complainants was far from innocuous:

What the evidence does clearly establish is that Mr. Dunlop's contact with the complainants, while originally thought of in incomplete material before the Court of Appeal as being innocuous, is far from benign and far from innocuous.

The Crown considered appealing the decision of Justice Plantana, but the Appeal Review Panel decided not to proceed with an appeal.

Courts' Review of Perry Dunlop's Involvement With the Complainants

I am of the view that the contacts that the alleged victims had with Constable Dunlop were considered by all courts in determining the wilful non-disclosure issue and the delay application. At the initial application before Justice James Chadwick, he had the benefit of the evidence of the complainants who were called and testified that they had no contacts with Constable Dunlop. In the appeal of this decision, the Court of Appeal had this evidence and the evidence of Constable Dunlop's call to a complainant's mother.

Neither Justice Chadwick nor the Court of Appeal had the evidence of Carson Chisholm. Mr. Chisholm gave evidence before Justice Plantana with respect to his contacts with complainants. He believed they had been at the courthouse before the trial. He also had contacts with some of the complainants' parents. He also testified at the Inquiry in a similar fashion. Justice Plantana did not

have the evidence of the complainants with respect of their lack of contact with Constable Dunlop.

It is unfortunate that I did not have the evidence of Mr. Dunlop or any of the alleged victims in the Jacques Leduc matter at the Inquiry. Thus, it appears that no judicial process has had complete evidence of Mr. Dunlop's involvement or lack thereof in the Leduc matter.

R. v. Keith Jodoin

As discussed in Chapter 7, "Institutional Response of the Ontario Provincial Police," Marc Carriere reported allegations of sexual abuse by Keith Jodoin, a local Justice of the Peace, on March 22, 1999.

The Crown brief was submitted to Assistant Crown Attorney Claudette Wilhelm on May 31, 2000. On July 4, she advised that there was sufficient evidence to proceed with charges. On August 1, after being interviewed by Ms Wilhelm the previous day, Mr. Carriere signed a document requesting that the OPP not proceed with charges.

On August 8, Mr. Carriere provided a second statement to the OPP and said that he now wished to proceed with charges. Mr. Carriere advised the OPP that Richard Nadeau had reassured him that he had something important to say and had encouraged him to go back to the police. Mr. Nadeau was interviewed by the OPP that day.

Mr. Jodoin was arrested on August 24 and charged with one count of sexual assault on a male.

Mr. Carriere testified that following the second interview with the OPP in August 8, he met with Ms Wilhelm and Detective Constable Joe Dupuis. He recalled Ms Wilhelm telling him that she could not continue with the charges because there was not enough proof. He thought they did not believe he was telling the truth. Mr. Carriere also testified that Detective Constable Dupuis and Ms Wilhelm told him that Mr. Jodoin's health had suffered.

On November 15, 2000, Ms Wilhelm advised Detective Inspector Pat Hall that she felt she had to withdraw the charge against Mr. Jodoin because of the involvement of Richard Nadeau. As I indicated in Chapter 7, Mr. Nadeau was an alleged victim of historical sexual abuse and was involved with a controversial website that posted information of allegations of sexual abuse in the Cornwall area. I discuss Mr. Nadeau's involvement with websites and his contact with alleged victims of sexual abuse in the section "Handling of Information Published on Local Websites."

On or around November 20, Crowns Curt Flanagan and Alan Findlay reviewed the disclosure in the Jodoin case and agreed there was no reasonable prospect of conviction. On November 20, 2000, the charge was withdrawn.

R. v. Brian Dufour

Shelley Hallett Receives Crown Brief; Case Considered a Priority

Detective Constable Steve Seguin, who was the lead investigator on the Brian Dufour matter, submitted the Crown brief to James Stewart, Director of Crown Operations, Eastern Region, on December 17, 1999. Shelley Hallett received it on January 7, 2000. The alleged victim, C-97, had provided his statement to the Ontario Provincial Police (OPP) two years earlier in September 1997.

As discussed in the “Clergy and Conspiracy Briefs” section of this chapter, by January 7, 2000, Ms Hallett had also received Crown briefs pertaining to five clergy members that required her review and opinion.

Ms Hallett reviewed and provided an opinion on the Brian Dufour matter before the other briefs because he had a prior criminal record for sexual assault and he was a childcare worker, both of which were significant factors in determining which brief to review first. In addition, the allegations against Mr. Dufour were more recent than those against the clergy members.

Ms Hallett faxed her opinion on the Brian Dufour matter to Detective Inspector Pat Hall and Detective Constable Joe Dupuis on April 4, 2000. Ms Hallett testified that the Dufour matter was a priority for her. Notwithstanding this sense of urgency, three months elapsed before she provided her opinion to the police. She was devoting all of her time and energy to preparing for the Father Charles MacDonald and Jacques Leduc prosecutions.

Shelley Hallett’s Opinion on Charges and Request for Follow-up

Ms Hallett recommended laying charges on two counts of indecent assault male and two counts of gross indecency. Her letter summarized the allegations and the supporting evidence contained in the Crown brief. She also referred to a prior charge, wherein Mr. Dufour pleaded guilty to sexual assault in Hamilton in 1988.

Ms Hallett noted in the letter that she would provide some suggestions for follow-up investigation. She believed that further information could be obtained that would advance the prosecution. Ms Hallett explained that she had done this with officers in the past and that the officers were generally willing to follow

her suggestions. However, Ms Hallett never sent the officers her suggestions for follow-up investigation because Mr. Dufour passed away shortly after he was charged.

Shelley Hallett and Detective Inspector Pat Hall Disagree on Conditions of Arrest

Ms Hallett concluded her opinion with a recommendation about the arrest and release of Mr. Dufour:

I would recommend that Mr. Dufour be arrested and released only upon a recognizance in a substantial amount (\$7,000–\$10,000) without a deposit but with a surety and conditions that include that he not be in the company of any youth under the age of 18 without the youth's parent being present.

Detective Inspector Hall interpreted this to mean that Ms Hallett wanted the officers to arrest Mr. Dufour in Hamilton, where he lived, and bring him to Cornwall for a bail hearing. The Detective Inspector disagreed with this suggestion. He was concerned about having his officers taking custody of and transporting the accused, whose health was not good.

Detective Inspector Hall raised his concerns with Ms Hallett, and they debated the matter. She thought his concerns were legitimate so she contacted the Hamilton Crown Attorney's Office to see if it was possible to have Mr. Dufour's bail hearing in Hamilton. She was unsuccessful. Detective Inspector Hall suggested that Mr. Dufour could be processed in Hamilton and released on a promise to appear with conditions by the officers and she accepted this suggestion. Ms Hallett testified she was "not insistent" in her discussions with Detective Inspector Hall, as it was ultimately the officers' decision. She said that the situation did not escalate beyond a professional discussion of options available.

On April 6, 2000, Detective Constables Seguin and Dupuis arrested Mr. Dufour in Hamilton. The terms of the release did not include a condition that he was not to be in contact with persons under the age of eighteen without the presence of a parent.

Brian Dufour Deceased

Mr. Dufour died of a heart attack on April 11. Ms Hallett was advised of his death on April 13, and all charges were withdrawn on April 17, 2000.

Timely Review

Ms Hallet incurred a delay of three months before she completed the review of the Crown brief and provided an opinion letter. The delay was excessive considering the priority this case had been given. I accept that she did not have sufficient time to devote to this task. That is another reason why a designated Crown counsel should have been assigned to these opinions. This would have permitted a more timely review of the Crown briefs.

R. v. Jean Primeau

In April 1999, a former student of Cornwall Classical College reported allegations of sexual abuse by Father Jean Primeau in the mid-1950s. The Ontario Provincial Police conducted an investigation, which is discussed in Chapter 7, on the institutional response of the OPP.

On August 6, 1999, Shelley Hallett received a letter and a one-volume Crown brief from Detective Inspector Pat Hall in respect of the allegations against Father Primeau. She was requested to review the materials and provide a written legal opinion regarding criminal charges in the matter.

Ms Hallett reviewed the Crown brief, but before she rendered her opinion Detective Constable Don Genier advised her on November 9 that Father Primeau had died of heart failure the day before.

In my view, Ms Hallett delayed in providing an opinion in this matter. The brief was provided to her at the beginning of August, and three months later the opinion had not been completed. If Ms Hallett was unable to provide an opinion in a timely fashion because of her workload, she should have advised her superiors. Once again, I point out that the Ministry of the Attorney General could have averted this problem by allocating sufficient resources to the Project Truth investigations, including the assignment of a dedicated Crown, or a team of dedicated Crowns to the prosecutions.

R. v. Malcolm MacDonald: Sexual Abuse

As previously discussed in Chapter 7, on the institutional response of the Ontario Provincial Police (OPP), three people reported allegations of sexual abuse against Malcolm MacDonald.

Crown Shelley Hallett was assigned to review the investigation into Mr. MacDonald. Ms Hallett was provided with a Crown brief on July 7, 1998, in respect of the allegations of two of the complainants. She was asked to review the file and provide an opinion on whether charges should be laid.

Opinion and Recommendations for Arrest Provided by Shelley Hallett

Ms Hallett provided Detective Inspector Pat Hall with her opinion in this matter on March 9, 1999. She recommended that charges of gross indecency and indecent assault be laid and provided draft wording for the charges. In her letter Ms Hallett also noted:

I would recommend that ... Mr. MacDonald be held in custody after being charged and released only after entering into a recognizance in a substantial amount (e.g. \$10,000), without deposit but with a surety, with conditions that he not communicate with the complainants or attend at their homes or places of employment and that he not be in the company of any young person under the age of 18 without that person's parent being present.

Ms Hallett explained that her main concern was recommending conditions of release in the event that there was an arrest:

My concern wasn't so much that there be an arrest, though, it was more the conditions that I felt would be appropriate in terms of a release into the community in terms of having a surety and ensuring no communication with the complainants and no association with any young person under the age of 18.

On March 11, Mr. MacDonald was charged with two counts of indecent assault and one count of gross indecency. He was released on a promise to appear rather than on a recognizance with a surety. The other conditions suggested by Ms Hallett were imposed. Ms Hallett acknowledged that under the *Criminal Code*, decisions about arrests are the prerogative of the police, and they can choose whether or not to follow her recommendations.

It took eight months for Ms Hallett to complete an opinion in this case. This delay is even more poignant when one considers that the first complainant provided his statement to the OPP in September 1997. As I have previously said, delays can have a significant and negative impact on victims and on the accused and should be minimized to the extent possible. In my view, the Crown should give priority to a brief with respect to allegations reported almost a year earlier. This again is a further example of the importance of assigning a dedicated Crown to the investigations. This Crown could have provided assistance to the investigators in a more timely fashion.

Follow-Up Investigation Requested and Further Disclosure of Crown Briefs

Following her review of the Malcolm MacDonald brief, Ms Hallett had some concerns and wanted the police to investigate further. She asked Detective Constable Seguin to follow up on some issues in the case.

On June 21, 1999, she requested that Detective Constable Seguin locate court documents that could narrow down the offence period and possibly confirm that Mr. MacDonald was in a solicitor-client relationship with the two complainants. Detective Constable Seguin wrote to Ms Hallett on July 22 and explained the steps taken to locate the materials.

Pre-Trial

A pre-trial was held in the Malcolm MacDonald matter on June 24, 1999. A further pre-trial conference was scheduled for a later date because there remained unresolved issues. Ms Hallett explained that at the time, preliminary inquiry dates were not set until all issues were resolved. The issues were resolved before the next pre-trial conference and the preliminary inquiry was set for January 17, 2000.

In preparation for the preliminary inquiry, Ms Hallett requested a law student conduct some research on the admissibility of homosexual disposition evidence and the admissibility of similar-fact evidence. She also requested the preparation of a memorandum on transitional provisions and sexual offences amendments, as she was concerned about whether proceedings commenced pursuant to the pre-1982 *Criminal Code* sections could be stayed based on constitutional invalidity.

On December 3, 1999, Ms Hallett received Volume 6 of the Crown brief, which contained the records and documents she had requested earlier.

Death of Malcolm MacDonald and Withdrawal of Charges

Mr. MacDonald died on December 23, 1999. After his death was confirmed, Ms Hallett requested that an agent attend court on January 11, 2000, to withdraw all charges against him.

R. v. Bernard Sauvé

Bernard Sauvé owned a convenience store in Cornwall. C-66 began working for Mr. Sauvé when he was fourteen years old. He alleged that Mr. Sauvé sexually abused him while he was working at the store. The investigation of these allegations has been examined in Chapter 7, on the institutional response of the

Ontario Provincial Police (OPP). Following the investigation, a Crown brief was prepared and submitted to Robert Pelletier on November 2, 1998. On February 2, 1999, he recommended that charges be laid. The OPP laid charges in respect of C-66's allegations on March 11.

Prosecution Assigned to Brockville Office

On or around March 19, 1999, the prosecution of the Mr. Sauvé was assigned to Brockville Crown Attorney Curt Flanagan. On April 26, Detective Inspector Pat Hall wrote a letter to Mr. Flanagan advising him that an additional complainant had come forward with allegations against Mr. Sauvé and that the police would put together a brief and submit it to Mr. Flanagan for his opinion on criminal charges. This Crown brief was prepared and forwarded to Mr. Flanagan on May 11, and additional charges were laid against Mr. Sauvé in respect of these allegations on July 28.

Preliminary Inquiry Held and Accused Committed to Stand Trial

On or around October 21, 1999, Mr. Flanagan assigned the matter to Assistant Crown Attorney Claudette Wilhelm. The preliminary inquiry was held from April 4 to 6, 2000. The accused was committed to stand trial, and a trial date was set for June 2001. The prosecution was transferred to Alan Findlay when Ms Wilhelm went on maternity leave.

Mr. Sauvé had significant medical problems, and as a result, the defence requested an adjournment of the trial. After reviewing the medical evidence, the Crown did not oppose this adjournment, and the trial was rescheduled for June 17, 2002.

Complainants Do Not Want to Proceed

A memo prepared by Mr. Findlay for regional Crown James Stewart in June 2002 outlines some of the events that occurred in this case following the committal to trial. It notes that during preparation for trial, one of the complainants was cooperative but the other, C-66, was not, and refused to attend scheduled appointments. According to Mr. Findlay, C-66 did not want to proceed any longer because the case was “destroying” his health: “It was apparent that [C-66] was suffering from extreme anxiety and stress.”

According to Mr. Findlay's memo, both complainants were offered victim/witness assistance. The Victim/Witness Assistance Program attempted to contact the complainants around May 2001. Louise Lamoureux, who worked in the Ottawa VWAP office, spoke with the first complainant. At the time, he was prepared to testify and indicated he would probably not require VWAP assistance. She was unable to reach C-66.

Approximately one year later, on May 24, 2002, the Manager of the VWAP program in Ottawa, Cosette Chafe, wrote an e-mail to Mr. Findlay, advising him that the complainant who had been willing to testify no longer wanted to proceed as he felt “the results of the Project Truth prosecutions have been a farce.” She also mentioned that C-66 was “not keen to testify either.”

As the trial date approached, the Crown scheduled meetings with the complainants in order to prepare them for trial. At a meeting on June 12, 2002, the first alleged victim advised that he was not looking forward to testifying in court because of personal issues. C-66 did not show up for this meeting. The next day, C-66 stated that he did not want to attend court. He advised Detective Constable Don Genier on June 14 that he was experiencing problems with his health as the trial date approached and was “feeling extremely stressed,” and as a result he wanted to stop the process. The first alleged victim was advised of this development later that day, at which time he said that he preferred to withdraw his complaint, mainly because of his spouse’s health.

Charges Withdrawn by the Crown

The charges were withdrawn by the Crown on June 17, 2002, on the basis of the complainants not being able to proceed as well as Mr. Sauvé’s health problems. Crown Findlay made the following submissions to the Court:

... [T]here are two complainants in this case and they both have suffered extreme anxiety and stress related to Court despite the best efforts of the Crown, the police and the victim witness office to assist them.

I also know that the accused person, Mr. Sauve, although medically fit to stand trial himself, suffers from various medical difficulties relating to heart disease and diabetes and complications from diabetes. And late last week Your Honour it became apparent that the complainants in this case, because of their difficulties may not be able to testify, that they may not be able to endure testifying in Court. Despite that there was some reason for the Crown to hold out some hope that over the weekend that the circumstances would change and that I would be able to call them as witnesses in this case. But, by this morning, it became clear that that was not something that was going to take place.

So based upon that factor Your Honour as well the fact of the accused’s own difficulty with his health, it’s the view of the Crown that it’s not in the public interest to proceed any further with the charges and I’m asking the Indictment to be marked withdrawn.

In my view, this is another example of victims of historical sexual abuse having difficulties in coping with their victimization and the court process. The first charges in this matter were laid in March 1999, but they were not set to proceed to trial before June 2002. It appears that VWAP services only became involved in the later stage of the proceedings. As Ms Chafe testified, when VWAP services are not involved early in the process, victims often refuse services. Perhaps earlier involvement may have assisted the victims.

Investigators and Crown counsel have to be sensitive to the fact that any delays in the prosecution of historical offences cause anxiety to victims as well as to the accused. Although delays in the court process cannot always be prevented, it is important to recognize the impact they may have on victims and accused persons.

No Charges Laid Against John Christopher Wilson

As discussed in Chapter 7, on the institutional response of the Ontario Provincial Police, Project Truth investigated allegations of sexual abuse made by Keith Ouellette against John Christopher Wilson, a teacher at St. Lawrence College.

Crown Opinion

Alain Godin had been assigned to a number of Project Truth prosecutions in or around the fall of 1998. In June 2000, Detective Inspector Pat Hall wrote a memo to James Stewart, Director of Crown Operations, Eastern Region, asking “for [Alain] Godin to review the John Christopher Wilson brief.”

Mr. Godin was provided with the Crown brief on June 27. He was asked to review the file and provide an opinion as to whether charges should be laid against Mr. Wilson. On June 29, two days after receiving the brief, Mr. Godin determined that there was no reasonable prospect of conviction. He sent Detective Inspector Hall a memorandum in which he noted:

There is also a problem with the consent issue, which if Mr. Ouellette was to be pushed, we could not distinguish where it was given and refused. The transactions cannot be clearly distinguished by the victim. On many occasions he cannot positively say that things were done to him, or who did it. In conclusion, there is not enough of a case to proceed against Mr. Wilson.

Mr. Godin thought there were too many difficulties with the evidence in this case. In addition to consent, there were too many inconsistencies in Keith Ouellette’s statement surrounding the details of where the events had allegedly occurred and what had happened.

I note that Mr. Godin was able to review the Crown brief and provide his opinion within two days. The advantage of a quick review is to provide the investigators with some direction on their next steps and allow them to advise the alleged victims of the Crown's position and status of the investigation without undue delay.

Mr. Godin testified that he will not recommend a charge be laid if there is no reasonable prospect of conviction. Crown Policy P-1, dated August 5, 1997, on "Police—Relationship with Crown Counsel" suggests the following practices when a Crown counsel is giving case-specific advice on charging:

Your written reply should set out the legal test for determining whether the threshold for laying a criminal charge is met. Both the objective and subjective elements of that threshold test should be addressed.

There are occasions where reasonable grounds exist but there is no prospect of conviction due to evidentiary problems or other reasons ... In such circumstances, it is appropriate to tell the police that though reasonable grounds exist, and that while the decision to lay the charge rests with the police, any charge laid will be withdrawn by the Crown and the reasons for the withdrawal put on the record.

Your letter should clearly indicate that you are providing a legal opinion only and that your legal opinion is not binding on the police ...

Although the opinion was provided in a timely fashion, it failed to set out the threshold for laying a criminal charge and to indicate that the legal advice was not binding on the police, as is recommended in the Policy.

R. v. Brother Leonel Romeo Carriere

As previously discussed in Chapter 7, on the institutional response of the Ontario Provincial Police, Brother Leonel Romeo Carriere was investigated following the allegations of two complainants, C-105 and C-106. Both were under the age of fourteen when Brother Carriere, a teacher, allegedly abused them at school.

Crown Opinion on Charges Against Brother Leonel Romeo Carriere

As previously discussed in this chapter, Robert Pelletier was provided with a number of Crown briefs on April 1, 1998, including the one involving allegations against Brother Carriere.

Following his review of the Crown briefs, Mr. Pelletier provided Detective Inspector Tim Smith with a memorandum setting out his opinion on charges against several alleged perpetrators. In the matter of Brother Carriere, Mr. Pelletier wrote that a defence of consent would not be an issue but noted:

There is however one caution that I make in relation to charges against Mr. Carriere. This individual is presently 77 years of age and would likely be in his eighties before any trial would be conducted. These allegations will be 45 years old by the time they are tried and relate to fondling-type activities on a limited number of occasions. While the merits appear to be fairly strong and while there is an absence of any obvious defence except a total denial, I question whether it is in the public interest in [sic] invoke criminal proceedings in respect of an individual of this age going back two generations in time. In the event that you feel that reasonable and probable grounds exist and that the public interest would be served by a prosecution, I would recommend that the matter proceed at least to a preliminary inquiry stage in order to fully assess the merits and determine whether further proceedings are in the public interest.

Although Mr. Pelletier recognized that it is the Crown attorney's responsibility to determine whether a prosecution is in the public interest, he took Detective Inspector Smith's opinion into consideration because of his experience in the St. Joseph's Training School case. On July 9, 1998, Brother Carriere was charged with two counts of indecent assault on a male.

In my view, Crown counsel has to be careful not to delegate the determination of the reasonable prospect of conviction to investigators. It is important to maintain the separation between the roles and duties of prosecutors and police officers, and the distinction between the reasonable and probable grounds test and the test for reasonable prospect of conviction.

Alain Godin Assigned to the Prosecution

Alain Godin was assigned to the prosecution of Brother Carriere. He did not recall reviewing Mr. Pelletier's opinion memorandum upon being assigned to this matter.

On May 31, 1999, the preliminary inquiry in *R. v. Brother Leonel Romeo Carriere* was heard before Justice Gilles Renaud. Brother Carriere was committed

to stand trial, and Mr. Godin prepared an indictment including two counts of indecent assault on a male on July 29.

The judicial pre-trial conference scheduled for September 10 before Justice Robert Desmarais was adjourned and took place on November 19, 1999. At the pre-trial conference, Brother Carriere re-elected a judge-alone trial and the matter was scheduled to proceed on June 12, 2000.

Stay of Proceedings

On June 12, 2000, defence counsel brought a motion for a stay of proceedings on the basis of Brother Carriere's health. Justice Paul Lalonde granted the stay of proceedings on June 13, noting:

Le requêreur est âgé de 79 ans et fait face à deux chefs d'accusations. Les faits supportant les chefs d'accusation eurent lieu durant les années 1954 à 1958, donc un délai variant entre 42 et 46 ans. Ce qui m'intéresse c'est le fait que durant ce délai l'accusé a subi des insultes cardiovasculaires causant une telle détérioration de son cerveau que cela lui empêche de présenter une défense pleine et entière à son procès. Donc, le droit de l'accusé à un procès juste et équitable, garanti par la Charte est mise en doute.

...

Leonel Carrière n'a pas le pouvoir de présenter une défense pleine et entière ou d'aider son avocat à le faire. Sur la prépondérance de la preuve, j'accepte que Monsieur Carrière n'est pas en position de présenter une défense pleine et entière et j'accorde la requête et ordonne l'arrêt de procédure en vertu du paragraphe 24(1) de la *Charte des Droits et Libertés* a cause d'une entrave au paragraphe 7 et 11(d) de cette même *Charte*.

Justice Lalonde found that Brother Carriere could not present a full answer and defence or instruct his counsel because of his health, specifically, strokes causing brain damage.

Following the decision of Justice Lalonde, Mr. Godin asked the victims if they wanted to appeal the matter, and they did not wish to do so.

A few of the prosecutions from the Project Truth investigations were stayed or withdrawn because of the health of the alleged perpetrators. This explains in part the low number of convictions relative to the number of charges laid. Elderly accused unable to stand trial because of health problems are a reality of prosecuting historical offences.

Clergy and Conspiracy Briefs

Shelley Hallett Assigned Additional Project Truth Briefs

On March 19, 1999, Detective Inspector Pat Hall met with James Stewart, Director of Crown Operations, Eastern Region, and Robert Pelletier about the assignment of Crowns for a number of Project Truth cases, including those involving allegations against various clergy members and the conspiracy to obstruct justice. Mr. Stewart requested that Detective Inspector Hall go to Toronto and explain the investigations to the Director of the Special Investigations Unit.

In June 1999, Shelley Hallett met with Detective Inspector Hall in Long Sault and he asked that she take on further work to help with the Project Truth cases. At this point, Shelley Hallett was already involved in four Project Truth prosecutions. Although she was very busy with appeals, policy work, and the other Project Truth cases, she found the work interesting and “certainly wanted to help.” She was not aware of the nature of the new work nor the form it would take, but she agreed to take it on. She cannot remember this additional assignment being formalized with Mr. Stewart.

Shelley Hallett Receives Crown Briefs on Clergy Investigations

Ms Hallett received briefs on Father Bernard Cameron, Father Gary Ostler, Monsignor Donald McDougald, and Bishop Eugène LaRocque on September 22, 1999. She received the Father Kevin Maloney brief in January 2000. Ms Hallett was asked to provide an opinion as to whether there were reasonable and probable grounds to lay a charge and whether there was a reasonable prospect of conviction. Ms Hallett preferred to review the briefs together to see if there were common themes and facts. Although the briefs were separate and distinct, Ron Leroux was a common complainant in four of the five briefs and the allegations had come to the attention of Project Truth through the investigation by Constable Perry Dunlop.

Ms Hallett testified that she has reviewed many cases over the years in her role as counsel with the Crown Law Office—Criminal and has a standard practice when reviewing Crown briefs. She required a number of days to review all witness statements and cross-check the information with other statements:

So I would find that that work was very painstaking in terms of reviewing the whole brief in order to determine whether there would be a reasonable prospect of conviction and, you know, whether or not also there might be other avenues of investigation that the police could pursue that might assist in terms of arriving at, you know, whether or not charges should be laid.

Ms Hallett further explained that when she reviewed matters she would always look ahead to the likelihood of prosecution. She felt it was important to identify the evidence that supported the offence, to identify likely defences and any follow-up investigation required. She described this as an important but “very time-consuming” task.

With respect to these briefs, Ms Hallett looked at the synopsis for each and at key witness statements. From this, she was able to get a general sense of what the cases were about and who the complainants were. Ron Leroux was the common complainant in four of these cases. Ms Hallett testified that the Project Truth officers informed her they had concerns about Mr. Leroux’s credibility. Nonetheless, Ms Hallett wanted to thoroughly review the matter and see if there were suggestions she could make to the officers about obtaining further evidence. Her review of the briefs never got to that stage.

Delay in Reviewing Briefs and Providing Opinions

As will be outlined in further detail below, concerns were raised repeatedly by the Ontario Provincial Police (OPP) regarding the length of time it was taking Ms Hallett to review these briefs and provide her opinions. Ms Hallett never finished her review of the briefs, and they were transferred to Lorne McConnery after the stay of proceedings in *R. v. Leduc* on March 1, 2001. Following this decision, Ms Hallett had no further involvement in Project Truth matters. Prior to this, four of the clergy briefs were in Ms Hallett’s possession for seventeen months and the brief on Father Maloney was in her possession for approximately fourteen months, without an opinion being rendered.

Ms Hallett did not recall being given a deadline to review these briefs. The clergy briefs were voluminous and included about 3,000 pages altogether. Ms Hallett knew it would take her some time to review them. She recalled that both Detective Constable Joe Dupuis and Detective Inspector Hall had told her that they did not think there would be charges laid in these cases. Ms Hallett was also waiting for the brief on the OPP’s conspiracy investigation, as Detective Constable Dupuis had suggested that she wait until she received it to do her final review. He advised that this brief might contain information that could be useful in determining whether charges should be laid based on these allegations.

Ms Hallett testified that at the time she was preoccupied with the *R. v. Leduc* matter. The preliminary inquiry took place in late fall 1999, and she was preparing for the pre-trial. She was also getting ready for the Malcolm MacDonald preliminary inquiry in January 2000, which did not proceed because of his death. In addition, Ms Hallett was getting up to speed with the Father Charles MacDonald prosecution. There was a lot going on in connection with the Project Truth investigations, which explained why she was not able to turn her attention to these briefs earlier.

Ms Hallett was less concerned by the passage of time in these cases since these were older allegations, there was not a lot of corroboration, and she had received a preliminary opinion from the officers that charges would probably not be laid. She was aware that the individuals under investigation would want to have the matter concluded, but she felt that it was in their interest to ensure that the review was thorough.

Ms Hallett agreed that it is not ideal for matters to be pending for fourteen to seventeen months. However, she felt that the more complex the brief, the more important it is to make sure that a good job is done in reviewing that brief and “that corners aren’t cut simply because people are in a hurry to get an outcome.” Ms Hallett testified that if the officers felt they had reasonable and probable grounds it was open to them to lay charges.

Detective Inspector Pat Hall Inquires About Status of Briefs

On January 6, 2000, Ms Hallett told Detective Inspector Hall that she would try to have a legal opinion on the five clergy briefs by the end of January. Mr. Stewart testified that at that date, he would not have been concerned about the length of time it was taking for the briefs to be reviewed.

On May 25, Detective Inspector Hall left Ms Hallett a message asking about the five outstanding legal opinions. Ms Hallett explained that by this time there were a number of developments regarding Constable Dunlop. In particular, she had undertaken to review the nine boxes of material he provided, which was a priority. Although she may not have advised Detective Inspector Hall at this point that she was too busy with the review of the Dunlop boxes, she believed Detective Inspector Hall was “acutely aware” of a number of concerns on other fronts at that point.

Detective Inspector Hall called Ms Hallett on June 27, and she told him she had not reviewed the other briefs yet and was waiting for the conspiracy brief to be completed.

Shelley Hallett Receives Crown Brief on Conspiracy Investigation

Ms Hallett received the nine volumes of the conspiracy brief on July 20, 2000. There were over 7,000 pages between the six briefs, and she had not realized it would be so large. Ms Hallett wanted to review the matter carefully as she knew the alleged conspiracy was one of the fundamental concerns in Cornwall. She wanted everyone to be satisfied that there had been a proper and thorough review of these briefs.

Ms Hallett testified that she wished the conspiracy brief had come to her before any of the other Project Truth briefs, as it would have assisted her in

understanding more about Constable Dunlop's investigations and the issues involving him before beginning the other prosecutions.

As with the other five briefs, Ms Hallett had no discussions with Project Truth officers about a deadline for the review of the conspiracy brief. Ms Hallett was aware that Project Truth was winding down; however, in her opinion, a prosecutor must remain "impervious to those kind of pressures" in order to render a just decision.

Shelley Hallett Tells Detective Inspector Pat Hall Legal Opinions Will Be Done in October

On August 22, 2000, Detective Inspector Hall asked Ms Hallett when she would have the legal opinions concluded and she told him in October. At the time, Ms Hallett believed this was possible, although she was already working on an appeal that was argued in September. Then she was assigned to work on a high-priority legislative initiative. But for this additional assignment, she would have been free to work on the briefs in the fall of 2000.

Detective Inspector Pat Hall Under Pressure to End Project Truth

As discussed in Chapter 7, on the institutional response of the OPP, Detective Inspector Hall was under some pressure to wrap up the Project Truth investigations. Ms Hallett was generally aware of the pressures he faced. She understood that he was having meetings with the Cornwall police, the mayor, and others, and that these meetings impressed upon him a sense of urgency in terms of wrapping up Project Truth. Ms Hallett did not recall Detective Inspector Hall discussing with her the pressures he was facing at the time.

Detective Inspector Pat Hall Expresses His Concerns to James Stewart

On December 5, 2000, Detective Inspector Hall called Mr. Stewart and discussed the briefs and the fact that legal opinions had not yet been provided. Mr. Stewart said he did not want to push Ms Hallett, and that in his opinion, there was no rush. Mr. Stewart testified, "Obviously if somebody's starting a trial and you have something where you haven't laid charges yet, in terms of priority, Leduc is the priority."

Mr. Stewart did not recall a concern being raised with him prior to this call about the length of time it was taking for Ms Hallett to review the briefs.

Also on December 5, Ms Hallett told Detective Inspector Hall that she could not say when she would have the opinions completed except that it would be after the Leduc trial. Ms Hallett testified that she did not sense any urgency in respect of these legal briefs.

Ms Hallett's explanation for the delay in the review of the briefs is summarized by the following testimony:

... it was something that was going to take quite a long time to review, to do the cross-check on, to do the follow-up investigation on. These officers themselves had been working on these briefs for a couple of years before they reached me. But before they reached me there were other briefs that reached me, and those briefs included the briefs on [Jacques] Leduc, [Father Charles] MacDonald, another [Malcolm] MacDonald, [Brian] Dufour and a number of other matters. So I'm doing my best under the circumstances.

***Detective Superintendent Chris Lewis Speaks to Murray Segal
About Delay***

According to Ms Hallett, none of her managers conveyed to her that there was urgency with respect to the review of the briefs, but she did not fault her managers as she was a senior Crown and did not require supervision. Although they may not have raised the issue with Ms Hallett, senior people within the Ministry of the Attorney General were being made aware of the OPP's concerns about the delay in Ms Hallett's review of the briefs. On December 13, 2000, Detective Superintendent Chris Lewis spoke with Mr. Stewart. He expressed his "concern that no legal opinions received from Crown Law yet." According to his notes, Mr. Stewart asked that they make another inquiry and if nothing was heard by the New Year, he would look into it.

Around this time, Detective Superintendent Lewis also contacted Ms Hallett and told her of his concerns. He said she explained that she was very busy and would get to the briefs soon. Detective Superintendent Lewis could not recall when he spoke with Ms Hallett.

On December 18, Detective Superintendent Lewis advised Detective Inspector Hall that he had spoken to Mr. Stewart about the briefs and Mr. Stewart suggested that he not get involved. Detective Inspector Hall's notes of the call further state: "Go to Toronto on same. Advised John Corolie [sic] Hallett's boss on case. Lewis will call as he knows him."

On January 15, 2001, Detective Superintendent Lewis called Murray Segal, Assistant Deputy Attorney General, Criminal Law Division, and expressed his concerns about the delay in the legal opinions. Detective Superintendent Lewis recounted that Mr. Segal apologized for the delay but was reluctant to say anything to Ms Hallett because she was starting a jury trial on Project Truth. He would figure out when best to speak with her and get back to Detective Superintendent Lewis.

Mr. Segal recalled having a brief conversation with Detective Superintendent Lewis about the briefs. Mr. Segal was aware the Leduc matter was starting within days and, as a result, Ms Hallett was extremely busy. He does not recall speaking to Ms Hallett about the matter:

If someone had on their plate a jury trial that was imminent within a matter of days or so forth, asking them or causing them to lose their focus or attention on that priority would not have made sense to me then.

Mr. Segal found the call with Detective Superintendent Lewis was cordial and there was no pointed sense of urgency or upset. He advised Detective Superintendent Lewis about the other significant priority Ms Hallett was handling. Mr. Segal did not consider reassigning the briefs to someone else. He explained that to give the briefs to somebody else would have entailed a learning curve that would far exceed the time it would take Ms Hallett to conclude the Leduc trial.

Detective Superintendent Lewis and Mr. Segal spoke again on February 6, 2001. Again Detective Superintendent Lewis expressed his concerns about the delay with the briefs. He said that the OPP was under pressure from the media and needed to move on. Mr. Segal believed he would have listened to Detective Superintendent Lewis' concerns and made a mental note to check how the Leduc trial was progressing.

Detective Superintendent Lewis understood that Ms Hallett was both the prosecutor in the Leduc trial and the Crown assigned to give opinions on the outstanding briefs. He did not recall any discussion with Mr. Segal about the priorities in Ms Hallett's workload. His sense from the conversation with Mr. Segal was that Ms Hallett was under stress because she was starting a trial and had a number of other responsibilities, and Mr. Segal was reluctant to pull the outstanding briefs from her at that time.

Detective Superintendent Lewis testified that he was not aware of the size of the briefs and did not know that Ms Hallett wanted to review the conspiracy brief before she rendered an opinion on the historical sexual assault cases.

Detective Inspector Hall testified on a number of occasions that Detective Superintendent Lewis relayed to him that Ms Hallett was having "some kind of emotional problems" and that this information had come from Mr. Segal. Detective Superintendent Lewis did not recall Mr. Segal communicating to him that Ms Hallett was having emotional problems. Detective Superintendent Lewis did not know what impression Detective Inspector Hall got from what he told him, which was that Mr. Segal was concerned about professional stress on Ms Hallett and not something personal. I heard no evidence from anyone except Detective Inspector

Hall about Ms Hallett having emotional problems, and in fact the two individuals who allegedly passed this information on to Detective Inspector Hall denied doing so.

Ms Hallett did not think this was the right time to be asking her to complete her review of the briefs as she was about to start a trial on a high-profile case.

Shelley Hallett Doesn't Ask for Help

Although I accept that Ms Hallett was busy with the Leduc trial in late 2000 and early 2001, and therefore was unable to review the briefs at that time, it appears that she would have been too busy to do so regardless of the Leduc trial. In my opinion, she should have asked for assistance in managing her workload. In addition, however, senior management within the Ministry of the Attorney General should have been involved in managing Ms Hallett's workload.

Ms Hallett did not request that someone relieve her of some of her work because she was reluctant to renege on her commitment to Detective Inspector Hall to review the briefs. She also did not think there was anybody to turn to in her office. Ms Hallett was familiar with the issues and individuals involved in these cases and, as a result, she "felt more of a duty to retain the briefs for the purpose of reviewing them than simply handing them off. However, she admitted that in retrospect she should have told Mr. Stewart she had too much work and asked him to reassign the briefs.

I am of the view that although they had not received a request from Ms Hallett for assistance, both Mr. Stewart and Mr. Segal were aware of her workload and both were aware of the public pressure on Project Truth officers to finalize their investigations. They should have reassigned the briefs despite their reluctance to do so. In my opinion, this is a further example of problems resulting from a failure to allocate adequate and appropriate resources to the prosecution of criminal charges from the Project Truth investigations.

James Stewart Meets With Detective Inspector Pat Hall About Briefs

As discussed earlier in this chapter, following the stay in *R. v. Leduc*, Ms Hallett was no longer involved in Project Truth cases. As a result, it became necessary to find a Crown to replace her in providing an opinion on these briefs.

On March 7, 2001, Mr. Stewart wrote an e-mail to Mr. Segal:

Just to keep you up-to-date I am meeting tomorrow in Kingston with the OPP to discuss the outstanding cases where an opinion needs to be rendered as to the reasonable prospect of conviction. The ultimate

review perhaps should be rendered by the new senior crown whoever that might be but I understand from Paul that Shelley might want to continue and I want to do my own initial assessment of the cases the appropriateness I will keep you posted.

Mr. Stewart testified that it appears from this e-mail that Ms Hallett may have wanted to remain involved in some of the opinions. Mr. Stewart wanted to assess the appropriateness of Ms Hallett remaining involved in light of the finding made against her in the Leduc case. Ms Hallett testified that in March 2001 she had some discussions with Mr. Stewart about the briefs being reassigned. She still wanted to attempt to review the briefs, as she believed this was her commitment. Ms Hallett later spoke with John Pearson, Director of Crown Operations, Central West Region, who told her she had to send the briefs off and that she should not worry about them.

Detective Inspector Hall's notes of the meeting with Mr. Stewart on March 8, 2001, read:

Discussed matter still under review by Hallett. Suggests he will have a scrum on same. Pick three Crown attorneys. Meeting in Ottawa. Do presentation on evidence. Require the investigators for same. Went through each case. Decided it would be better for Crown doing Father Charles MacDonald to do the conspiracy review as well.

...

Appears Hallett will not be further involved in Project Truth matters.

Mr. Stewart explained that a "scrum" means a case conference during which three or four Crowns will look at a case and make a decision about it. He could not recall whether the intention was to have three Crowns write opinions or just have a scrum and have one or two write opinions. Ultimately, Mr. McConnery rendered the opinions.

With respect to these briefs, Mr. Stewart testified that he came to understand that the police had concluded that they did not have reasonable and probable grounds. He also learned that the original agreement with Peter Griffiths, the previous regional Crown, was that all of these files would be reviewed by a Crown before the police would consider laying charges. According to Mr. Stewart, this is not the normal approach. Usually, if the police don't have reasonable and probable grounds, the cases are not referred to the Crown for an opinion. The police will sometimes bring sensitive cases to the Crown because they know the next test is reasonable prospect of conviction, and if the Crown won't prosecute a case there is little point in laying charges.

I disagree with this practice. The police have the right to lay charges and the Crown has the right to withdraw them. These roles are separate and distinct, and they should remain so. Once the police lay a charge the matter becomes public, which may lead to additional information coming to the attention of the police that could, in turn, make the case a stronger one to prosecute.

Detective Superintendent Jim Miller E-Mails Murray Segal

On May 22, 2001, Detective Superintendent Jim Miller, Director of the OPP's Criminal Investigations Branch, sent an e-mail to Mr. Segal expressing concerns about the time frames for the legal opinions. Detective Superintendent Miller had received an e-mail from Detective Inspector Hall setting out his concerns about the delay in receiving the Crown opinions. Mr. Segal responded the next day, advising that Mr. McConnery would be reviewing the material on a priority basis.

Lorne McConnery Assigned to Review Outstanding Briefs

On May 23, 2001, Mr. McConnery received a call from Mr. Stewart and was advised that he would be reviewing a conspiracy brief and some other briefs regarding sexual assault allegations that had been assigned to Ms Hallett and to do so "with some priority." Mr. McConnery was told that the matters had been outstanding for a "fair amount of time."

On May 29, Mr. McConnery attended a meeting with Mr. Stewart and others about setting up an office. As discussed previously, when Ms Hallett was assigned to Project Truth matters she was not given an office and did a lot of work out of her hotel room in Cornwall. In this instance, Mr. McConnery and Kevin Phillips, who began assisting him in June, were provided with a boardroom in which to work.

Transfer of Briefs to Lorne McConnery

Around the end of May 2001, Mr. Stewart asked Ms Hallett to send the conspiracy brief to Mr. McConnery for his review. By May 28, several of the briefs were already at Mr. Stewart's office, but Ms Hallett still had a copy of the conspiracy brief.

On June 13, Mr. McConnery met with Detective Inspector Hall and Detective Constable Joe Dupuis at the Long Sault Detachment and received their master copy of Project Truth's conspiracy brief. Mr. McConnery recalled that the officers were not happy to give him their copy because they thought he should receive Ms Hallett's copy of the brief. Mr. McConnery agreed to photocopy the brief and return the OPP's copy to them.

Mr. McConnery received the conspiracy brief from Ms Hallett on June 25. Ms Hallett did not have any further contacts with Mr. McConnery or Mr. Phillips with respect to the opinions on the briefs.

I have previously commented on some of the problems encountered when briefs remain in the possession of prosecutors no longer assigned to a case. This is yet another example of delays created by the failure to transfer a brief in a timely fashion. The stay of proceedings in the Leduc matter had been granted almost four months previously and a new Crown assigned. Crown briefs and files belong to the Ministry of the Attorney General and not to Crowns personally, and should be returned to someone within the Ministry as soon as a Crown is no longer involved in a case.

On July 4, Mr. McConnery received a letter from Detective Inspector Hall with an additional will-state and notes that were not in the briefs he was initially provided. These items included materials from 1993 and 1994, so they were not all “new” documents. Mr. McConnery explained that police notes are often not included in Crown briefs and the Crown has to request them.

At this point, Mr. McConnery found himself with significantly more material to review than he had started out with.

***Murray Segal Meets With Lorne McConnery and James Stewart:
Briefs to Be Done in Thirty Days***

On June 4, 2001, Mr. McConnery and Mr. Stewart attended a meeting with Mr. Segal. At this point, Mr. McConnery had received some of the clergy briefs but did not yet have the conspiracy brief, which, as discussed above, he received near the end of June. During this meeting, Mr. Segal said that he would like the review of the briefs done in about thirty days. Mr. Segal testified that he does not usually set time limits:

... I must have been impressed with the passage of time, the interest of the police force, my concerns about the integrity of the cases, you know, the witnesses and victims and the community. I just wanted to get on with it.

Mr. McConnery had already been advised that the matter should be prioritized. It was clear to him from this meeting that there was a lot of concern about getting this done as quickly as possible. He understood this was a top priority and he was to devote himself full-time to this review. In the end, it took Mr. McConnery longer than thirty days to complete his review of the briefs. When asked about this delay, Mr. Segal testified that he wanted Mr. McConnery to deal with the matter quickly and he thought he took that to heart.

Lorne McConnery Begins Review of Briefs

Mr. McConnery's review of the briefs spanned from June into August. He and Mr. Phillips split the briefs between them, although they both eventually read all the briefs. Mr. McConnery reviewed all the briefs regarding allegations by Mr. Leroux, namely the Father Cameron, Bishop LaRocque, Father Ostler, Monsignor McDougald, and conspiracy briefs. Mr. Phillips reviewed the Father Maloney brief, which involved allegations by C-15. Mr. McConnery testified that because of the nature of the allegation of conspiracy to obstruct justice and the people who were mentioned in that allegation, he felt it was important that he review anything involving Mr. Leroux. Mr. McConnery wanted to be able to assess his credibility.

As will be discussed further, Mr. McConnery flagged Mr. Leroux's credibility as an issue from the moment he reviewed the videotape and transcript of his interview by the OPP. Mr. McConnery thought it was quite clear Mr. Leroux was being dishonest.

Mr. McConnery testified that there was some information missing in the briefs. There were also associated briefs he was interested in looking at. Although some of these other briefs did not assist the Crowns in forming their opinion on these particular briefs, they touched on some of the same issues and therefore were helpful. Some of the additional material requested by Mr. McConnery will be discussed below.

For all the briefs Mr. McConnery reviewed, the officers did not have reasonable and probable grounds. The issue was a lack of subjective belief. Mr. McConnery agreed that he could not tell an officer that he or she had reasonable and probable grounds. If an officer has concerns about credibility or subjective belief, the Crown cannot help him or her get over that hurdle, although the Crown may be able to give advice about areas where follow-up work could be done. In terms of what Mr. McConnery was doing with respect to these briefs, he testified as follows:

So all I was doing was looking at whether or not when you've got such substantial and significant allegations as were being made here and you have officers saying basically we're not prepared to lay charges, was that well founded on their part?

...

I look at whether or not they have done follow-up with respect to what the subject or suspects may have said. So, you know, have they actually gone and investigated alibis. And I think there were some of these where we had to direct some follow-up in that regard.

For each of the briefs, Mr. McConnery prepared a “factual analysis” document outlining what he thought were the more significant parts of the allegations in a more concise fashion than a several-volume brief. This was not his normal way of proceeding when asked to give an opinion, and he testified that he probably prepared these documents because he thought these matters would be subject to some type of review later. He thought these were very unusual circumstances. It was not his intention to provide them to the police with the opinion letter, although he would have provided them to the police if requested. He believed Detective Inspector Hall requested the document relating to the conspiracy brief.

View on Constable Perry Dunlop’s Role

Constable Perry Dunlop and his lawyer, Charles Bourgeois, took a number of statements from Mr. Leroux in late 1996 and early 1997, in part to support Constable Dunlop’s civil action against the Cornwall Police Service and other institutions. These statements were turned over to Chief Julian Fantino and subsequently to the OPP.

Mr. McConnery was aware that Constable Dunlop had shown photos to witnesses for identification. He felt this compromised the case and that as an experienced police officer, Constable Dunlop would know that is not the way to procure information about identity. Mr. McConnery testified that in addition to the photographs, other aspects of the interviews by Constable Dunlop concerned him with respect to tainting witnesses. For example, there were no records of Constable Dunlop’s interviews. Because allegations were made that he had prompted people and told them what to say, Mr. McConnery was very concerned that there was no record of what he said to anyone.

Lorne McConnery Meets With Murray Segal

On July 5, 2001, Mr. McConnery met with Mr. Segal, who made several suggestions regarding Mr. McConnery’s review of the briefs. Mr. McConnery’s notes of the meeting say:

During meeting with Murray Segal he suggests we obtain 1) copy of Crown brief re R. v. Malcolm MacDonald, att. obst. justice, 2) transcript of plea by Malcolm MacDonald, 3) written request to S. Hallett to ensure I have all the material needed, 4) [redacted] 5) *clear picture of police view as to R&PG re the six outstanding briefs I am reviewing.*
(Emphasis added)

According to Mr. Segal, the decision to lay charges rests with the police. It would be incorrect for the police to take “marching orders” from the Crown, and he was just reminding Mr. McConnery of that. Mr. Segal thought it was important in these cases to know where the police stood before Mr. McConnery expressed an opinion. It was clear to Mr. McConnery that he was conducting reasonable and probable grounds reviews and part of his responsibility was to ask the police whether they felt they had reasonable and probable grounds. According to Mr. McConnery, many police officers would like the Crown to tell them they have reasonable grounds, but that is not the Crown’s role: “it’s not what we do.”

As we have seen previously in this section, in Project Truth Crown attorneys were being asked to provide opinions to the OPP on whether there were reasonable and probable grounds to lay charges. This is not the usual way criminal charges are laid. I have mentioned several times that the police are responsible for determining whether charges should be laid. However, in the Project Truth operational plan it was contemplated that all briefs would be submitted to the Crown for review and recommendations about laying charges. It is not clear whether this document was shared with the Ministry of the Attorney General or the Crowns assigned to Project Truth cases, or whether officials within the Ministry of the Attorney General were consulted about this plan.

Lorne McConnery Meets With Detective Inspector Pat Hall

Mr. McConnery had a meeting with Detective Inspector Hall on July 10, 2001. He made a number of requests for information and material, and followed up on Mr. Segal’s request to obtain the police views on reasonable and probable grounds. According to Mr. McConnery’s notes of the meeting, the first topic of discussion was MPP Garry Guzzo. Mr. McConnery was familiar with the concerns raised by Mr. Guzzo. One of these was an allegation that someone was in possession of videotapes that were potentially relevant to alleged criminal acts. Mr. McConnery asked Detective Inspector Hall to follow up with Mr. Guzzo about this allegation.

Mr. McConnery understood that the videotapes Mr. Guzzo was describing potentially showed various parties in sexual acts, possibly with youths, and he thought these tapes could be very relevant to the briefs he was reviewing.

The next issue that was discussed was a follow-up request with respect to the Father Maloney and Bishop LaRocque briefs. It was Father Maloney’s position that he had never been at St. Joseph’s Training School in Alfred, where C-15 claimed he was abused. Mr. McConnery wanted to obtain records from St. Joseph’s to confirm or disprove that. Those records had not yet been obtained or reviewed by the Project Truth investigators. The follow-up request with respect to Bishop LaRocque was related to the Bishop’s claim that he was attending a

conference on the last weekend of August in 1993. This issue was part of the analysis of the conspiracy brief and the alleged meeting that occurred on Stanley Island. The Bishop's attendance at a conference would constitute an alibi.

The conversation then moved to the police views of reasonable and probable grounds. Mr. McConnery asked Detective Inspector Hall about his impression with respect to reasonable and probable grounds on each of these briefs. According to Mr. McConnery's notes, with respect to the matters based substantially on the allegations of Mr. Leroux, Detective Inspector Hall said something to the effect of, "I would not put my hand on the Bible re: anything Leroux says, or ask any of my men to do it." It was clear to Mr. McConnery that Detective Inspector Hall did not have subjective reasonable and probable grounds on any allegation based solely on Mr. Leroux's statements.

Lorne McConnery Writes Follow-Up Letter to Detective Inspector Hall

The following day, July 11, Mr. McConnery sent a letter to Detective Inspector Hall about the issues discussed during their meeting. Regarding the issues raised by Mr. Guzzo, Mr. McConnery wrote:

The existence or non-existence of the copies Mr. Guzzo is referring to must be established immediately. If such copies exist as claimed, they must be located seized and retained as evidence. If the existence of the copies is proven false, that too is clearly significant. I suggest that immediate steps be taken to determine the existence of the videos, and to properly secure them as evidence. What ever safeguards must be undertaken to get the co-operation of "these people" who have "found" the copies must be addressed immediately. I don't think I can underline the significance of this issue anymore strongly.

Mr. McConnery wanted to ensure it was clear to Detective Inspector Hall how concerned he was and that he wanted to see some follow-up on the matter. On July 19, Detective Inspector Hall interviewed Carson Chisholm and asked him about the existence of videotaped movies of child pornography or sexual acts that allegedly belonged to Ken Seguin. Mr. Chisholm said that if the tapes still existed, as alleged by Mr. Guzzo, he did not know where they were or who had them.

Mr. McConnery also referred to the follow-up requested with respect to allegations against Bishop LaRocque and Father Maloney, which he felt was significant. In particular, he felt the follow-up on the Bishop LaRocque matter was important: "the man gave an alibi. It was imperative that there be follow-up to whatever extent there could be."

Mr. McConnery had further contacts with Detective Inspector Hall about his requests for follow-up information, and he received a letter on July 25 enclosing some of that material. Mr. McConnery felt that the issues he had raised were followed up in a timely fashion.

Crown attorneys have different approaches on requesting follow-up investigative work from police officers. Peter Griffiths was less inclined to request additional information from them, while Mr. McConnery and Ms Hallett adopted a more proactive role by requesting that the officers follow up on certain matters. I find that with respect to matters within Crown discretion, the different approaches are acceptable. However, it would be preferable to have a consistent approach when dealing with large investigations or special projects.

Review of Clergy Briefs

Mr. McConnery testified that he had no recollection of the particulars of the clergy briefs he reviewed. In respect of all five of these briefs, he concluded that there were no reasonable and probable grounds to support a charge.

Review of Conspiracy Brief

In examining Mr. McConnery's review of the conspiracy brief, the first question to consider is what exactly he was looking at. In his "factual analysis" he set out what he believed he was reviewing:

My review of this matter has been isolated to the allegation of conspiracy to obstruct justice against various members of the Roman Catholic Church, members of the Cornwall Police Service, and the Crown Attorney for the United Counties of Stormont, Dundas & Glengarry for allegedly arranging for a financial settlement to be paid to David Silmser for the purpose of derailing and terminating the criminal investigation of Silmser's complaint and any potential criminal prosecution arising therefrom.

Mr. McConnery was clear in his testimony that he was not looking at potential allegations of conspiracy with respect to a clan or ring of pedophiles, or whether people were conspiring to sexually abuse children. Rather, he was looking at whether there was evidence to support an allegation of a very particular criminal conspiracy among the Cornwall police, Crown Attorney Murray MacDonald, Bishop LaRocque, two or more local lawyers, and Ron Wilson, a funeral director, the result of which was the agreement between David Silmser and the Diocese of Alexandria-Cornwall. The issue for Mr. McConnery was whether there was

evidence to support charges of that conspiracy among those ten or twelve people. Nobody instructed Mr. McConnery to focus exclusively on the meeting alleged to have occurred on Stanley Island. He applied his own judgment as to what might be an offence, which led him to focus on that allegation.

Mr. McConnery was not reviewing the conspiracy to obstruct justice that was investigated by Detective Inspector Smith in 1994. An opinion had already been rendered on that matter. Rather, he was reviewing the new allegations about the conspiracy that had been raised by Mr. Leroux, particularly the allegations about the meeting on Stanley Island.

In his analysis of the conspiracy, Mr. McConnery identified three scenarios for possible charges. The first scenario consisted of conspiracy charges based on Mr. Leroux's evidence of what occurred at the Stanley Island meeting, combined with evidence of negotiations of the settlement. However, Mr. McConnery had some concerns about Mr. Leroux's credibility and about the admissibility of some of the evidence he could potentially give, in particular about conversations he had with Ken Seguin:

A significant issue in this scenario would be the extent to which Leroux could testify. If a court allowed only his observations of the Sunday meeting of the V.I.P.'s but not allow Leroux to relate what he was told by Ken Seguin, there may still be some evidence of a conspiratorial meeting a few days prior to the signing of the agreement to support the charges.

The next scenario Mr. McConnery contemplated was the case without Mr. Leroux's evidence:

If the evidence of Leroux is determined to be so unreliable that the prosecution would not advance his evidence, then what remains would appear to be the same factual premise that was presented to Peter Griffiths, Director of Crown Operations, East Region when he gave his opinion in the letter of December 21, 1994. If Leroux was determined to be unreliable, then despite the thorough investigation of Project Truth investigators, the evidence is really no different than presented to Griffiths. The theorizing and speculations of Perry Dunlop do not advance the case. Is there any reason to vary from the opinion of Mr. Griffiths?

The fact that Mr. Griffiths had rendered an opinion in 1994 on the obstruct justice issue did not intimidate or influence Mr. McConnery. He noted that without Mr. Leroux's evidence, many of the alleged conspirators could not be charged.

Mr. McConnery also contemplated a third scenario that was unrelated to Mr. Leroux's allegations:

A perplexing issue is that Jacques Leduc was never charged in 1995. Accepting that he claimed never to have intended or realized that the clause regarding the criminal proceedings was included in the final draft of the Final Release and Undertaking, and that the Crown's theory in the prosecution of Mr. Malcolm MacDonald acknowledges that position of Mr. Leduc, it is quite clear that Mr. Leduc, having been subsequently charged with sexual assault himself, is not necessarily the person he was considered to be in 1994. The subsequent investigation of both Leduc and Malcolm MacDonald put them both in a different light.

...

My point is that, in retrospect, Leduc and Malcolm MacDonald could clearly be seen to have their very own personal agenda in getting Mr. Silmsen to sign this agreement in 1993. Without the evidence of Malcolm MacDonald, is there really a case to pursue against Leduc?

Mr. McConnery testified that this scenario just jumped out at him. He was saying that with the benefit of hindsight, looking at the negotiations, Jacques Leduc may have had an ulterior motivation to cover up Mr. Silmsen's allegation. However, the evidence to support this theory came from Malcolm MacDonald, who was dead.

Mr. McConnery recalled a discussion with Detective Inspector Hall about what efforts had been made to source the money paid to Mr. Silmsen. He felt that if a number of the people involved in the negotiation had contributed to the fund, this would be a very significant factor to consider. Mr. McConnery was satisfied that the OPP had done what it could do, and he did not recall requesting follow-up with respect to the possibility of files or documents in possession of the lawyers involved in the settlement. He thought that at some point there was a discussion about the manner in which search warrants would be executed on solicitors' files but could not recall suggesting that the officers execute warrants and seize the files of Mr. Leduc, Mr. MacDonald, and Sean Adams.

According to Mr. McConnery, the third scenario was somewhat different from the conspiracy allegation he was looking into, which involved a number of parties. He did not believe he was asked to review or provide an opinion on this issue about Mr. Leduc, which he raised himself in his review of the materials.

Lorne McConnery Writes Opinion in August 2001

On August 2, 2001, Mr. Segal asked Mr. McConnery to write his opinion letter “ASAP.” Mr. McConnery completed his opinion letter, addressed to Detective Inspector Hall, on August 15. In the letter, he concluded:

Upon a review of all of the above-noted material, I find that your concerns and conclusions about the lack of reasonable and probable grounds are appropriate and justified. All of the allegations of the complainants Leroux and [C-15] have been carefully studied in the context in which those allegations were made, and your opinion as to the credibility of the allegations is reasonable and well-founded in my view.

OPP Issues Press Release: No Evidence of a Pedophile Ring

On August 22, 2001, the OPP issued a press release announcing the conclusion of Project Truth. The release stated, “The OPP found no evidence that a pedophile ring operated in the city. There is nothing to indicate individuals operated in concert with each other to commit offences.”

Mr. McConnery testified that he was never asked for an opinion about a pedophile ring, had not expressed an opinion on that allegation, and did not think it would have been appropriate to provide an opinion about that. He was not happy with the press release because:

... the thrust of this press release seemed to me to be saying this has all been subjected to Crown review, i.e. Lorne McConnery, without naming me, and he too has found that there is no paedophile ring in the City of Cornwall. I never expressed an opinion on it. I was never asked for an opinion on it, and if that’s what somebody might read this press release and take from it, it was dramatically incorrect.

I agree. Mr. McConnery’s opinion was based on Mr. Leroux’s conspiracy theory, and not on a broad investigation of a pedophile ring.

R. v. Jean Luc Leblanc, 2001

After his conviction in 1986, discussed earlier in this chapter, Jean Luc Leblanc came to the attention of the police again in December 1998. The consequent Project Truth investigation resulted in Mr. Leblanc being charged with fifty-one

counts of sexually abusing young people. He was initially charged and arrested on January 5, 1999, and subsequently charged and arrested on further counts on March 11, 1999, July 27, 1999, and April 7, 2000.

Jean Luc Leblanc Pleads Guilty and Is Declared a Long-Term Offender

The prosecution of Mr. Leblanc was assigned to the Brockville Crown Attorney's Office. On March 26, 2001, Mr. Leblanc pleaded guilty to six counts. He pleaded guilty to twelve counts on June 7, and the remaining thirty-three counts were withdrawn by the Crown. Crown Curt Flanagan told the Court that the counts withdrawn were duplicates and covered the same factual allegations that had been previously pleaded.

Crown Claudette Wilhelm attended at the March 26 court appearance. One of the victims, Cindy Burgess-Lebrun, recalled a female Crown at one of the court appearances, and this was the only contact she recalled having with a Crown prosecutor. Ms Burgess-Lebrun was upset that she was not able to read the victim impact statement she prepared to the Court herself and that the Crown read it instead: "Like I said, it's different coming from your heart as opposed to me saying, 'Here, can you read this?' It's a big difference."

I will provide comments on a victim's involvement with the reading of his or her victim impact statement in the section on *R. v. Robert Sabourin*.

At the June 7, court appearance, Mr. Flanagan attended for the Crown and brought an application to have Mr. Leblanc designated a dangerous offender. At the commencement of the hearing, it was agreed on consent that the application would proceed as a long-term offender application. The Crown called Dr. Philip Klassen, Deputy Clinical Director at the Centre for Addiction and Mental Health, in support of its application. On September 20, 2001, Dr. Klassen submitted an interim report to the Crown in which he wrote:

... His [Jean Luc Leblanc's] level of risk is such, however, that I would support the notion that he presents as being at substantial risk of re-offense. I do believe, however, that there is a "reasonable possibility of eventual control of the risk in the community."

Accordingly, and from a purely psychiatric perspective, I would support that this individual be found a Long-Term Offender.

The application was heard on April 10, 2002. On April 22, Justice Dan Chilcott found that Mr. Leblanc was a long-term offender and sentenced him to ten years incarceration, with a reduction of eighteen months for time already spent in custody. In addition, he was sentenced to a ten-year long-term supervision order.

External Pressures on Project Truth Prosecutions: Garry Guzzo

In Chapter 7, where I examine the institutional response of the Ontario Provincial Police, I have elaborated upon some of the external pressures the OPP Project Truth officers experienced during the course of their investigation. Similar external pressures were also experienced by Crown prosecutors and employees of the Ministry of the Attorney General during the prosecution of Project Truth cases. Specific pressures experienced by Crown attorneys included the loss of the binders delivered by Constable Perry Dunlop to the Ministry, comments by MPP Garry Guzzo and others in the legislature and media, and the establishment of websites dedicated to Project Truth investigations and prosecutions.

Garry Guzzo Expresses Concern About the Dunlop Binders

As discussed in Chapter 7, on April 8, 1997, Constable Dunlop hand-delivered a cover letter, a videotape containing the *Fifth Estate* segment featuring him, and four binders of information (the “Government Brief”) to the following government agencies in Toronto:

- The Solicitor General and Minister of Correctional Services:
The binders and the videotape were refused by this office and only the letter was accepted, by John Periversoff.
- The Ontario Civilian Commission on Police Services: Clerk Assistant C. Labielski accepted the letter, the videotape, and the binders.
- The Ministry of the Attorney General: Appeal Records and Support Assistant Michael Austin accepted the letter, the videotape, and the binders.

The first two binders of the Government Brief contained materials compiled by Constable Dunlop. The first seventy-four tabs of these binders were identical to the seventy-four tabs of the Fantino Brief that had led to the establishment of Project Truth. An additional eleven tabs of material had not been included in the Fantino Brief. The other two binders contained materials related to the *Police Services Act* charges against Constable Dunlop, which also had not formed part of the Fantino Brief.

The covering letter that accompanied the Government Brief set out Constable Dunlop’s concerns about a group of pedophiles operating in the Cornwall area and about a conspiracy to cover up allegations of sexual abuse. The letter noted the accompanying materials. As mentioned in Chapter 7, Peter Griffiths responded to Constable Dunlop’s letter on June 23, 1997.

As discussed in Chapter 7, the Solicitor General was the only one of the three government offices to forward the material received from Constable Dunlop to the

OPP. Because the Solicitor General had accepted only the letter and not the binders containing the Government Brief, only the letter was passed on. Chapter 7 recounts how the Government Brief eventually came into the possession of Project Truth.

Detective Inspector Pat Hall Advises Robert Pelletier That Project Truth Had Obtained the Government Brief

In a letter dated August 10, 1998, Detective Inspector Pat Hall informed Robert Pelletier that the OPP had learned of the Government Brief only on July 23, 1998, though Constable Dunlop had delivered it to the Ministry of the Attorney General in April 1997. Detective Inspector Hall provided Mr. Pelletier with two statements found in the new materials that pertained to the Father MacDonald case for his information and disclosure. Mr. Pelletier did not believe he reviewed the other materials contained in the four volumes.

Despite having provided disclosure materials relevant to the Project Truth investigation to two government agencies, Constable Dunlop was the one who provided Detective Inspector Hall with a copy of those materials on July 31, 1998.

As will be discussed below, what was contained in the Government Brief and whether the OPP had that material was an issue repeatedly raised by MPP Garry Guzzo. His inquiries led to an internal investigation within the Ministry of the Attorney General in an attempt determine what happened to the material accepted at its office.

Garry Guzzo Raises Concerns About the Materials Delivered by Constable Perry Dunlop

As discussed in Chapter 7, Mr. Guzzo started to ask questions about the investigations in Cornwall sometime between the fall of 1996 and May 1997. He testified that he had some discussions with Attorney General Charles Harnick and Solicitor General Robert Runciman, who both told him they knew nothing about Cornwall but that in any event, nothing was wrong.

Frustrated by the lack of response, Mr. Guzzo wrote a letter to Premier Mike Harris on September 18, 1998, with copies to the Solicitor General and the Attorney General. The letter raised concerns about the police investigations in Cornwall and talked about the material Constable Dunlop had delivered to the government offices:

The next question, one must ask, of course, is can we be certain that all of the documentation that was served upon our government was turned over to the OPP? Let me say that from what I have seen I am satisfied that it was. However, I cannot be certain of this fact ...

Mr. Guzzo concluded his letter by requesting a private meeting with the Premier:

I've hesitated to advise the two ministers responsible herein and would request a private meeting with you prior to your making the contents of this letter known to anyone. *There is an abundance of information available which I choose not to refer to herein because I cannot prove the truth of same. However, I have little doubt that it is accurate.*
(Emphasis added)

In October 1998, the Attorney General gave a copy of this letter to Murray Segal, the Assistant Deputy Attorney General of the Criminal Law Division, and requested that he take whatever action he deemed necessary. As Mr. Segal had a "relative lack of knowledge about the file," he requested a memorandum from Mr. Pelletier, Acting Director of Crown Operations, Eastern Region. Mr. Pelletier prepared a memorandum about the allegations of sexual abuse in Cornwall and the Project Truth investigation. This was the primary source of information available to Mr. Segal at the time.

Mr. Segal testified that in December 1998, he attempted to contact Mr. Guzzo by telephone but his calls were not returned.

On February 23, 1999, Mr. Guzzo sent another letter to Premier Harris, again copied to the Solicitor General and the Attorney General. Mr. Guzzo testified that he felt compelled to write the second letter because the allegations in Cornwall came up during a caucus function and were dismissed as being of no serious consequence. Mr. Guzzo was told that things were under control, there was no problem, and that people had been charged in Cornwall. In his second letter, Mr. Guzzo stated that he was concerned about the fact that individuals whose allegations were contained in the Government Brief delivered in April 1997 had not been questioned.

Murray Segal Speaks With Garry Guzzo About His Concerns

In early March 1999, Mr. Segal was again asked to respond to Mr. Guzzo. Mr. Segal testified that a request to deal with an MPP was rare but happened from time to time. On March 8, Mr. Segal contacted Mr. Guzzo, who was in Florida. When he received the telephone call, Mr. Guzzo expressed concern about why Mr. Segal was contacting him. Mr. Segal explained that he was calling him as a courtesy in his administrative capacity. According to Mr. Segal, the conversation lasted fifteen to twenty minutes.

According to Mr. Segal, a number of issues were raised during this conversation. In addition to the missing materials delivered to the Ministry of the Attorney

General, they discussed hotel receipts and videotapes, both of which Mr. Segal was unaware of at the time. Mr. Segal testified that he told Mr. Guzzo that if he had documents or information about documents, he should refer them to the police.

I am of the view that if Mr. Guzzo was in possession of material evidence or relevant information pertaining to ongoing investigations, he should have provided this to Project Truth investigators.

On March 14, Mr. Segal left Mr. Guzzo a voice-mail message advising him that the “brief” Guzzo had been referring to had been provided to the authorities. The following day, Mr. Guzzo sent Mr. Segal a letter confirming the message:

Mr. Segal, your tape indicates that “I (Mr. Segal) called to confirm that authorities have that brief that you (Mr. Guzzo) were referring to.” Does this mean that the authorities have it now, or had it all along? If so, from what date?

Mr. Guzzo wrote to Mr. Segal again on March 16:

Further to my memo of 03/15/99 I wish to confirm that you replied that the “authorities” (OPP) had the brief for several months and that any further communications I wish to make should be give to the police ...

...

Unless I hear to the contrary in writing, I will assume that this is the case and the evidence had been given to the OPP many months ago.

Mr. Segal sent Mr. Guzzo a note inviting him to contact the OPP if he was still concerned: “While I believe we are talking about the same stuff, if you are in any doubt feel free to contact the OPP—Insp. Tim Smith.”

Murray Segal Briefs the Deputy Attorney General

Mr. Segal prepared a briefing memorandum for Deputy Attorney General Andromache Karakatsanis on March 31, 1999. Mr. Segal detailed his contacts with Mr. Guzzo, who continued to have concerns regarding whether the police had the Government Brief and why the police had not interviewed certain individuals. Mr. Segal noted:

One of Mr. Guzzo’s chief concerns was that the police didn’t have a brief of materials apparently delivered to MAG and perhaps others.

To alleviate any concerns I spoke with the police officer in charge. Eventually, I was assured that the police had received a somewhat similar package prior to April 1997. Although I haven't located as yet where the material delivered to MAG in April 1997 went, the police confirmed that they had a duplicate copy from the same source as far back as July, 1998.

Garry Guzzo Expresses Concerns About Murray Segal in a Letter to Ron McLaughlin

On April 3, 1999, Mr. Guzzo sent a letter Ron McLaughlin, Chief of Staff for the Premier, as he had made a decision to start documenting the case. This letter raised a number of issues including the status of the police investigation and the material delivered by Constable Dunlop:

He assured me that all of the documentation had been turned over to the Ontario Provincial Police. I asked him to review his file and to advise if he had the name of the person who had accepted delivery of the documents, or if there was an affidavit of service of the documents in the file ... Mr. Segal reviewed the file for three or four minutes and then said to me, and I think I am quoting him accurately; 'Wait a minute, we did not send this material to the Ontario Provincial Police.' He then advised me that his department had sent the material to a third party. Mr. Segal then gave me the name of the third party.

When shown this passage during his testimony, Mr. Segal testified that the reference to him reviewing the file for three or four minutes did not make sense to him: "That doesn't sort of stand out in my mind as something I would have told him or I would have been able to figure out from—it's not as if there's like some master file on Project Truth."

Mr. Segal later disagreed with Mr. Guzzo's description of their conversation, which led Mr. Guzzo, on November 1, 2001, to send him a copy of his letter to Mr. McLaughlin and invite him to correct any inaccuracies. Mr. Segal responded to this letter on November 7 and suggested to Mr. Guzzo that perhaps they should both agree to disagree:

Mr. Guzzo, I doubt that we will ever see eye to eye regarding the conversation we had on March 8, 1999.

...

I do not want to debate with you at this stage your interpretation of the conversation. I know what I said to you, and I know that your recollection and interpretation of the conversation varies significantly from my own. In addition, I would remind you that there are matters currently before the courts. Accordingly, it is perhaps best to ‘agree to disagree.’

Internal Investigation by the Ministry of the Attorney General

On June 18, 2001, Mr. Segal submitted a report to Deputy Attorney General Mark Friedman regarding the handling of the binders known as the “Government Brief.” Mr. Segal testified that someone under his direction prepared the report. The Minister had asked the Deputy Attorney General for a report on the handling of the Dunlop materials. Mr. Segal believed this is because Mr. Guzzo was raising the issue in the Legislature.

The report focuses on the issue of the four missing binders, and the steps taken in 1999 and 2001 to locate the materials, including asking the clerk who signed the acknowledgment of receipt about his recollection of events at the time. Mr. Segal testified that nobody under his direction was able to find the documents in either 1999 or 2001. The report determined that the materials were probably sent to the Attorney General’s Office and treated as correspondence. According to Mr. Segal, the documents may have been kept in the Minister’s correspondence and thus lost over the years because “Ministers come and go and new Ministers don’t have access to old Minister’s stuff ... so it may have gone astray.”

The report outlines some of the protocols that were put in place and improvements that were made to ensure this does not happen again. Crown Law Office—Criminal now has a computerized log and a manual log to record the service of legal documents.

According to Mr. Segal, it was a rare occurrence that people would provide boxes or binders of materials directly to the Ministry of the Attorney General, as Constable Dunlop did. Although Mr. Segal acknowledged that the documents should not have been lost, he was satisfied that the police had all the materials.

Mr. Segal did not believe that this report was shared with Detective Inspector Hall or others from the OPP. Mr. Segal did not recall whether he or the Ministry made a public statement in 1999 with respect to the fact that the four binders had been lost. Mr. Segal testified that he provided information to superiors so they could make an announcement, if the question arose. Mr. Segal thought he probably advised Detective Inspector Hall or someone else of the 1999 search.

Detective Inspector Pat Hall Requests That the Ministry of the Attorney General Investigate the Missing Binders

On July 13, 2001, Detective Inspector Hall sent Crown Attorney Lorne McConnery a letter outlining the facts surrounding the disappearance of the binders delivered to the Ministry and the attempts he had made to ascertain what happened to them. He noted that this issue had been the subject of considerable media attention, and he suggested an independent investigation, as “an explanation will be required.” He wrote, “It is my view that this issue will not ‘go away’ and it is incumbent upon the Ministry of the Attorney General to conduct an investigation into this matter.”

Detective Inspector Hall testified that there were allegations in the media that the material that went to the Ministry was being withheld in order to protect Crown Attorney Murray MacDonald and that the police were not being provided with full information. The Detective Inspector said he just wanted something in writing from the Ministry stating that this was not the case.

On July 17, Mr. McConnery discussed Detective Inspector Hall’s concerns with Mr. Segal. Mr. McConnery’s notes state:

Also discussed P. Hall’s concern re brief missing in AG office. Segal says thorough search done and Susan Kyle [counsel in Mr. Segal’s office] aware of issue. He will refer this to her. Min. has been assured that the material it received from Dunlop was same as material given to Fantino and Sol. Gen. with few exceptions that the material in fact made it to the parties it was intended for. O.P.P. have confirmed that contents are complete re Dunlop’s boxes, i.e. fact that AG boxes lost has not led to anything in fact being lost.

Mr. McConnery specifically recalled James Stewart talking about the search of the Ottawa Regional Director’s Office and Mr. Segal telling him that the Ministry offices at 720 Bay were searched.

Mr. McConnery responded to Detective Inspector Hall on August 15. He advised that he had forwarded a copy of the Detective Inspector’s letter to Mr. Stewart and that his concerns would be addressed by the end of August 2001.

On September 6, Mr. Stewart responded to Detective Inspector Hall. Mr. Stewart wrote that searches had been conducted for the documents, without success, and various means had been undertaken to ensure the police had copies of the material. When Mr. Stewart wrote this letter, his understanding was that the police were in possession of the material. Mr. Stewart also wrote: “I understand

that you have consistently taken the position that the investigation was not prejudiced as a result of the material not having been forwarded to the police by the Ministry.”

Detective Inspector Hall testified at the Inquiry that although the materials could have been received sooner, once they were received from Constable Dunlop, the investigation was not prejudiced. However, Detective Inspector Hall thought some of the information that was not included in the Fantino Brief, such as the *Police Services Act* investigation material, was important for the conspiracy investigation. He explained that he was going to be interviewing a number of police officers and it would have been helpful to know what the officers said in 1994 or 1995 when the *Police Services Act* investigation was conducted.

Detective Inspector Hall did not feel that he received a satisfactory explanation for the non-delivery of the material to the OPP.

Mr. Stewart received a response to his letter from Detective Inspector Hall two and a half years later, in April 2004. Mr. Stewart did not know what sparked this response.

Detective Inspector Hall testified that he replied to Mr. Stewart two and a half years after the initial letter because he wanted to clean up the investigation before he retired. He wanted something in writing from the Ministry of the Attorney General confirming that it had not withheld the Government Brief. Detective Inspector Hall contended that he was never told what happened with the four binders.

Mr. Stewart responded to Detective Inspector Hall’s letter a week later and advised that the Leduc matter was still ongoing and that if Detective Inspector Hall had new evidence he should contact the prosecutor involved in the case.

Effect of the Loss of the Dunlop Binders

According to Detective Inspector Hall, the failure of the Ministry of the Attorney General to deliver the Dunlop binders to the OPP did not affect the OPP investigation in any way.

I am prepared to accept that the failure of the Ministry of the Attorney General to locate the materials delivered by Constable Dunlop and to forward them to the appropriate police service for investigation had only limited consequence to the Project Truth investigation. It did, however, cause a number of people to question the actions of public institutions and their motivation. Many of these individuals, such as Mr. Guzzo, made those concerns public, and that in turn caused members of the Cornwall community to have those same doubts.

The loss of the binders by the Ministry of the Attorney General was not acceptable. I heard evidence that the Ministry now has a computerized and a

manual log to track the service of such documents. I recommend that the Ministry review its tracking system and confirm that documents are logged not only when they are received but also when they are reviewed. If the documents disclose matters requiring an investigation, they should be forwarded to the appropriate police service and copied to a designated person within the Ministry.

Upon reflection, the public response of the Ministry to the loss of the Dunlop binders was worse than losing the materials. In hindsight, the failure of Ministry officials to acknowledge the loss of the Dunlop binders in a public and timely fashion may have fuelled public concerns about institutional incompetence and cover-ups.

External Pressures: Information Published on Local Websites

During Project Truth, several websites were established that contained information about the Project Truth investigations and prosecutions, including victim statements and media articles. These websites had an impact on the investigation and prosecution of some cases. The material they published raised concerns about the accused receiving a fair trial and had the potential to discourage further victims from coming forward for fear that their statements or other personal information might be posted on the Internet.

James Bateman's Website: www.projecttruth.com

On April 24, 2000, James Bateman created the website www.projecttruth.com. He obtained statements from Constable Perry Dunlop's investigation, which he posted on the website. Mr. Bateman closed the website on August 2, 2000.

Cornwall Crown Attorney Murray MacDonald contacted Detective Inspector Pat Hall on July 26, 2000, and expressed some concerns about allegations against him posted on www.projecttruth.com. Mr. MacDonald was also concerned that the website might violate a non-disclosure order.

In late July 2000, Crown Shelley Hallett was contacted by Detective Inspector Hall and asked to look at the website. As will be discussed below, Ms Hallett arranged a meeting of officials from the Ministry of the Attorney General to discuss the website in September 2000.

Murray Segal, Assistant Deputy Attorney General, Criminal Law Division, wrote a letter to Mr. Bateman on August 29, 2000, in response to an e-mail he had sent to the Attorney General on July 1, in which he requested, among other things, "your review, consideration and investigation, public or private of all concerns mentioned on website www.projecttruth.com." In his response, Mr. Segal wrote:

I do not support the website as it has not served the interests of the Cornwall community. You have named the website “project truth,” which is the same name as the official police investigation, which could confuse the public. Members of the public accessing the website may have been led to believe that it was associated with the O.P.P. *Project Truth* investigation and they may be of the view that these investigators have improperly published the affidavits of victims who reported their experience of sexual abuse. This in turn would reduce public confidence in the official O.P.P. investigation into allegations of sexual abuse of young people in the Cornwall community. These investigations are at a critical juncture with some cases just beginning to come to trial. Victims and other witnesses who may not have yet come forward to the police may be inhibited from doing so as a result of their perception that the police, contrary to accepted practices, have disseminated confidential information. As you can appreciate, reduced public confidence in the official police investigation has the potential of bringing the administration of local criminal justice into disrepute.

By the time, Mr. Bateman received this letter, www.projecttruth.com was no longer in operation.

Richard Nadeau’s Website: www.projecttruth2.com

Richard Nadeau, a victim of historical child sexual abuse, launched his own website on August 26, 2000, named www.projecttruth2.com. It reproduced some of the content of James Bateman’s website. Mr. Nadeau acknowledged under oath, during the stay application in *R. v. Jacques Leduc*, that he obtained statements of complainants alleging historical child sexual abuse from Constable Dunlop, some of which he published on his website. Mr. Dunlop also testified under oath, during a pre-trial motion in *R. v. Leduc* in 2004, that he had given Mr. Nadeau witness statements, binders, and some boxes of materials.

Mr. Nadeau also testified that Mr. Dunlop did not have any connection with the website. Mr. Nadeau viewed the website as a continuation of Constable Dunlop’s work in Cornwall.

Ministry Response to www.projecttruth2.com

On August 26, 2000, the *Standard-Freeholder* published an article about the creation of www.projecttruth2.com.

On August 29, Detective Inspector Hall raised the issue of the website with James Stewart, Director of Crown Operations, Eastern Region, who advised him

to speak with Ms Hallett about the matter. Detective Inspector Hall was later advised that lawyers from the Ministry of the Attorney General would meet to deal with the website.

On September 13, 2000, Mr. Segal, Paul Lindsay, Director of the Crown Law Office—Criminal, Mr. Stewart, and Ms Hallett met to address steps to be taken with regard to the www.projecttruth2.com website. Ms Hallett had previously asked an articling student to prepare a research memorandum on the jurisdiction of Superior Courts and the power to control their own process, as she was considering judicial measures. Ms Hallett also prepared a document for the meeting to provide senior management with background information on the websites, concerns from the perspective of the Ministry of the Attorney General, and a suggested course of action. One course of action she proposed was bringing an application before the Superior Court for an order temporarily shutting down the website until the completion of the trials.

During the meeting, everyone expressed concerns about issues such as freedom of expression as guaranteed by the *Charter of Rights and Freedoms*. Ms Hallett testified that they felt there were other ways of dealing with the matter without going to the lengths of getting an order to close down the website. Mr. Segal testified that in his experience, shutting down a website is something that is rarely contemplated and even more rarely pursued. Ms Hallett subsequently advised Detective Inspector Hall that no steps would be taken to close down the website.

I am of the view that it is not the role or responsibility of the Ministry of the Attorney General's to regulate websites or to determine whether criminal offences have been committed in their operation. If concerns arise regarding websites, the matter should be referred to the police for investigation. If a police service finds that a crime has been committed, it should lay the charge and forward a Crown brief to the Crown Attorney's Office. The Crown Attorney's Office seized with the matter should then proceed with the prosecution if there is a reasonable prospect of conviction, as with any other charge. In this case, however, it was reasonable for Detective Inspector Hall to seek pre-charge Crown advice given the novelty of website concerns at the time.

Richard Nadeau Cited in Contempt for Violation of a Publication Ban

The *R. v. Leduc* trial started on January 15, 2001. On January 16, at the Crown's request, Justice Colin McKinnon ordered a publication ban on the identity of alleged victims. The ban covered conventional broadcasting methods and the Internet.

Mr. Nadeau's widow, Carmen Prigent, testified that on January 16, 2001, after the court proceedings, Mr. Nadeau prepared a summary of the proceedings of the day in which he recorded certain things about victims, without mentioning their names, and the choice to proceed by judge and jury.

On January 17, defence counsel advised Justice McKinnon that Mr. Nadeau had posted some information about the preceding day on his website, in violation of the publication ban. The parties were in the process of arguing a defence motion to change its election of the mode of trial from judge and jury to judge alone. Ms Hallett had been opposing the motion; however, in light of this new development, the Crown consented to the re-election by the defence to a trial by judge alone.

Justice McKinnon requested that Mr. Nadeau attend court that afternoon regarding the information posted on the website. Justice McKinnon spoke to Mr. Nadeau about the seriousness of his actions and the damage that resulted, in particular, that he had completely compromised the Crown's ability to have a jury trial. Justice McKinnon also addressed Ms Hallett about the issue of holding Mr. Nadeau in contempt of court. He suggested that it would be unfair to prosecute Mr. Nadeau because the Judge had already questioned him about his actions: "But given the circumstances, given the fact that I've put the question directly to him, demanded an answer, without citing him, I think it would be perhaps unfair to then launch a prosecution."

Mr. Nadeau continued to publish information about the trial on his website, and on January 22 he was cited for contempt of court. Justice McKinnon stated, "Mr. Nadeau you're here, you're listening to me. I'm citing you for contempt of court, in that your web site and the article specifically attributed to you are damaging to the due administration of justice."

On January 29, Mr. Nadeau attended court with his lawyer. Assistant Crown Attorney Terrance Cooper attended as Crown counsel. Justice McKinnon ordered Mr. Nadeau to remove all material from his website relating to individuals who had been charged but not tried. The parties were to return to court on February 15.

On January 31, Detective Inspector Hall checked the website to verify whether Mr. Nadeau had complied with the order from the Court. The material was still on the website. Mr. Nadeau told the Detective Inspector that he did not know what to remove. The next day, Assistant Crown Attorney Cooper and Detective Inspector Hall faxed Mr. Nadeau's lawyer a list of material to be removed from www.projecttruth2.com pursuant to the January 29 order of the Court.

On February 13, Detective Constable Steve Seguin and Ms Hallett met with Mr. Nadeau. Ms Hallett expressed her concerns about the fact that witness statements were published on the website. She said this was affecting the Crown's ability to prosecute cases and could potentially deter other victims from coming forward.

Mr. Nadeau appeared before Justice McKinnon on February 15, and the contempt hearing was scheduled for September 20 and 21, 2001. The Court

continued the interim order prohibiting Mr. Nadeau from publishing material on his website pertaining to cases before or still to be brought before the courts.

Mr. Segal retained outside counsel to handle the Richard Nadeau contempt matter, as he wanted to provide some additional distance and objectivity in determining what the Crown's position should be.

On April 5, Justice McKinnon wrote a letter to Mr. Nadeau's counsel advising that another article posted on Mr. Nadeau's website constituted contempt of the administration of justice, contained malicious and false information, and was in direct breach of his order made in January. A copy of this letter was provided to Crown Cooper separately. Justice McKinnon requested that he include this new article downloaded from the website as part of the record in the contempt proceedings.

A page from the www.projecttruth2.com website printed on April 18, 2001, states that the website was closed on April 13. According to Ms Pr gent, the fifty articles were removed from the website and a decision was made to shut it down.

On August 7, 2001, Mr. Nadeau appeared before Justice Douglas Cunningham on the charge of contempt of court. Justice Cunningham found Mr. Nadeau guilty of two counts of contempt for both the January 20 and April 3 postings on his website. He was fined \$1,000.

Resurrection of the projecttruth.com Website

On February 15, 2002, an article in the *Seaway News* referred to Mr. Nadeau's "resurrected" website. Approximately five months later, Mr. Segal received a letter from Steven Skurka, defence counsel in the Jacques Leduc prosecution, raising concerns about information posted on www.projecttruth2.com. Mr. Skurka wrote:

It is my considered opinion that the comments noted in this website and in particular the latter comments about Justice McKinnon, feigning ignorance of Perry Dunlop, are defamatory libel within the meaning of s. 298(1) of the Criminal Code, as well as a repetition of Mr. Nadeau's contempt of court. I bring this matter to your attention for further investigation as an officer of the court concerned about the potential criminal conduct exhibited by the operator of this website.

On July 19, Mr. Segal turned the matter over to Detective Superintendent Ross Bingley of the OPP to determine the appropriate course of action. Detective Inspector Hall was assigned to conduct an investigation.

On September 11, Detective Inspector Hall contacted Crown Lorne McConnery, advised him of Mr. Skurka's letter, and asked him for his views on whether a criminal offence had been committed. According to Detective Inspector Hall, he had several contacts with Mr. McConnery over the next few months, seeking legal direction about the website.

On December 17, Detective Inspector Hall wrote to Mr. Stewart requesting an opinion on whether criminal charges should be laid against Mr. Nadeau with respect to statements made on his website. Detective Inspector Hall subsequently wrote to Mr. Stewart and Mr. McConnery in May 2003 requesting a reply to his request for advice. Mr. McConnery responded by e-mail on May 9, stating there was no case for defamatory libel:

It is my view and I have expressed it many times to Pat, that there is no evidence of an offence under s.300 of publishing a defamatory libel that the suspect knows is false. To the contrary, there is every indication that the suspect believes the allegations are true, and in fact with respect to the sexual assault allegations, the Police had rpg to lay the charges that were stayed and are under appeal. The more interesting question is the offence under s.301 which does not require proof that the suspect knew the libel was false. However, I do not see how we can get around s. 309. It appears to me that Nadeau believes what he published was true, that his belief was reasonably held and that there can be little doubt that he felt these were matters of public interest and needed to be discussed for the public interest ... Pat Hall has consistently advised me that he is not satisfied that RPG exists for libel charges, and I can't envisage that there would be RPC for the offence of defamatory libel, pursuant to s. 301.

Impact of the Website

The website inflamed the community and angered a number of victims in the Project Truth cases. In my view, the impact of the website in 2000–2001 was greater than it would be today. The Internet was still in its relative infancy and the creation and maintenance of specialized websites, particularly by individuals, was a relatively new phenomenon. Many people accepted as true information posted on the Internet in the same way as they would accept the truth of information published in a newspaper. Today most people are more skeptical of material on the Internet.

In my view, the response of the Ministry of the Attorney General was appropriate. However, in hindsight, given the residual effects of the website on the community at large, a more timely response would have been helpful.

R. v. Robert Sabourin

André Lavoie's Allegations Against Robert Sabourin

André Lavoie reported allegations of historical sexual abuse against Robert Sabourin, a teacher at St. Lawrence High School, on March 14, 1996.

As previously discussed in Chapter 6, on the institutional response of the Cornwall Police Service, Mr. Lavoie gave his statement to Constable Heidi Sebalj of the Cornwall Police Service (CPS). Other complainants subsequently came forward, and Mr. Sabourin was charged with a number of counts. He eventually pleaded guilty to some of those charges.

Mr. Lavoie believed he was present at every court appearance, but did not recall ever being in communication with a Crown. Mr. Lavoie expressed concerns about the level of his involvement in the court process:

... I was not kept informed of the process as it evolved until he pled guilty, so I really have very little to say about that process. I am pleased that there was a guilty verdict entered in the process I am disappointed that part of that guilty plea also exclude victims from taking the stand, which I feel is quite regrettable to examine the full magnitude of the horror that was done to those victims.

Mr. Lavoie took many months to prepare a victim impact statement that explained the impact that the abuse had on him. It was completed on October 8, 1998. He testified that he would have liked to have read it at the sentencing hearing, which proceeded on April 12, 1999.

Mr. Sabourin was sentenced to a period of incarceration of two years less one day. In Mr. Lavoie's opinion, "[I]t was vindication but, in my mind, this was far too lenient in terms of the sentence." He further stated, "I think sexual abuse of children is considered to this day as a minor transgression committed by individuals in positions of responsibility."

Alain Seguin's Allegations Against Robert Sabourin

Alain Seguin disclosed allegations of historical abuse against Mr. Sabourin because he read in the paper that other complainants had come forward and that Mr. Sabourin had been charged. He initially called the Project Truth hotline to disclose his allegations, but someone from Cornwall Police Service called him back.

Mr. Seguin gave a statement to CPS Constable Shawn White on January 26, 1998. He alleged that Mr. Sabourin, a photography teacher at St. Lawrence/La Citadelle High School, sexually abused him. At the time, he was thirteen or

fourteen years old and attended school at Jean XXIII, a junior high located near La Citadelle.

Mr. Seguin recalled that the next contact regarding his allegations was a request from the CPS to prepare a victim impact statement. He was given a package and asked to drop off the completed form at the police station. Mr. Seguin testified, “I remember feeling that there wasn’t very much communication, that my information on the case was coming from the newspaper.” Mr. Seguin also said he found out from the newspaper that Mr. Sabourin had pleaded guilty to the charges:

And then the last one is when he pled guilty and I read that in the paper and, you know, I realized—I was quite upset actually, like how come I wasn’t there? I mean, they wanted my Victim Impact Statement but yet they didn’t ask me to come down and read it.

Mr. Seguin said that he was never asked about his views on sentencing, nor offered any type of victim services, nor does he remember being contacted by anyone from the Crown Attorney’s Office.

The Crown Attorney’s Office’s Relationship With Victims

Murray MacDonald confirmed that his office handled the prosecution of Mr. Sabourin. He was involved in the judicial pre-trial, and the prosecution was handled by Assistant Crown Attorney Guy Simard. At the time, there was no Victim/Witness Assistance Program in Cornwall to communicate with victims or witnesses. Mr. MacDonald testified:

We had a practice that should have worked in theory but did not always do so at no fault of—I’m not trying to blame the police and I’m not criticizing my assistant Crown Attorneys or—we did occasionally miss the opportunity to contact a complainant. Sometimes it was with the crossing of wires between the Crown and the case manager. Sometimes it was a crossing of wires between the case manager and the investigator.

Mr. MacDonald explained that his office has since built in safeguards: “There was one back then as well but it was another one that was not foolproof. The current practice the Victim Witness Program has a double-check system that would preclude that happening.”

I believe Mr. MacDonald was referring to the process in place to obtain victim impact statements, but Mr. Lavoie and Mr. Seguin, who testified at the Inquiry on

this matter, were concerned about not having the opportunity to read the statement at the sentencing hearing. I note that the current Crown Practice Memorandum PM [2004] No. 3 deals with a number of issues regarding victims and their input during sentencing. The practice memorandum also reflects legislative changes, and the policy on victim impact statements (VIS) today reads as follows:

The court shall, on the request of the victim, permit the victim to read a VIS prepared and filed in accordance with s. 722(2) to the court, or present the VIS in any other manner approved by the court.

I am satisfied that the current Crown policy provides that a victim can read his or her victim impact statement if he or she so chooses, as is provided in the *Criminal Code*.

The two victims in this case also expressed their dissatisfaction with their involvement in the sentencing process and the sentence received by Mr. Sabourin. Policy V-1 on “Victims of Crime,” dated January 15, 1994, provides as follows:

Victims should be given an opportunity to attend court at the time of plea and sentence, and should be informed of their right to do so. Victims should be consulted regarding significant decisions made by the Crown with respect to sentence, plea, withdrawal of charges, including any decisions which may result from resolution discussions.

Thus, even as early as 1994 the Ministry had a policy that recognized the need to consult with victims on significant decisions with respect to sentencing. It is unfortunate that Mr. Lavoie and Mr. Seguin were not provided with an opportunity to participate more actively in the process. Their involvement may not have had an impact on the sentence imposed by the Court but could have assisted the victims to obtain closure on the matter.

R. v. Earl Landry Jr.

The Cornwall Police Service (CPS) conducted an investigation into reported allegations of sexual abuse against Earl Landry Jr. This investigation is discussed in Chapter 6, on the institutional response of the Cornwall Police Service. This was not a Project Truth case, and the prosecution was handled by Assistant Crown Attorney Lynn Robinson from the Cornwall Crown Attorney’s Office. I have dealt with this matter in the CPS chapter. In this section I will comment on only two issues, a disagreement regarding a Crown’s request for follow-up to the police and a complainant’s reluctance to testify.

Some issues arose between Ms Robinson and CPS Sergeant Brian Snyder during the prosecution of this matter. Ms Robinson brought these issues to the attention of Crown Attorney Murray MacDonald in a memorandum dated May 27, 1998.

The next day, Mr. MacDonald wrote to Chief Anthony Repa about the concerns raised by Ms Robinson. The letter and its content have been discussed in Chapter 6. Chief Repa responded on June 9, 1998. He apologized for the “unnecessary breakdown in communications” and proposed a solution:

In an effort to effectively control the situation, I would respectfully request that you and your staff forward all correspondence concerning requests for follow-up by our officers, to my personal attention. I will ensure that the requests are given the attention deserved.

According to Mr. MacDonald, this practice was adopted.

As mentioned in Chapter 6, an issue arose in June 1998 when one of Mr. Landry Jr.’s victims, C-54, advised that he no longer wished to proceed with the charges. Crown Robinson received a letter on June 11 from defence counsel Don Johnson enclosing correspondence he had received from C-54. On July 26, Ms Robinson received a letter directly from C-54 addressed “to whom it may concern”:

I wish to drop all charges concerning Earl Landry, due to stress on myself and my family, I will be seeking counselling in the future to help me deal with my past. I do not wish to be present at any of the court dates.

In a handwritten note at the top of the document, Ms Robinson directed Constable Kevin Malloy to have Sergeant Snyder contact the victim and tell him he would be subpoenaed if there was no guilty plea. The Crown’s office intended to proceed regardless of C-54’s desire not to participate.

Mr. Landry Jr. was arrested for obstructing justice on September 4, 1998, when it was uncovered that he had promised C-54 a computer in exchange for withdrawing his charge.

Mr. Landry Jr. pleaded guilty to the sexual abuse charges against him and received a custodial sentence of five years.

The Ministry of the Attorney General adopted Policy CS-1, “Charge Screening—Commentary on Recanting Crown Witnesses,” on August 5, 1997. It explains:

The words “recanting witness” have come to have an imprecise meaning that includes many situations where a witness is reluctant or fearful to testify but has not changed the original statement. To recant means to withdraw or repudiate earlier statements. It does not mean a simple reluctance to testify.

The Crown here was not dealing with a recanting witness. C-54 was not changing his evidence but rather stating that he did not want to participate in the prosecution for personal reasons. In hindsight, given the manner in which the Crown was informed of these events and the young age of the complainant, I am of the view that this should have raised questions for the Crown.

Threatening an alleged victim of sexual abuse with a summons was not the most appropriate response in these circumstances. Perhaps the Ministry should consider modifying its policy on recanting witnesses to include a policy on reluctant witnesses. This would provide direction to Crown counsel faced with similar circumstances. An appropriate response might be to have the matter investigated by police to determine if anything is behind the victim’s reluctance to testify, as was true in this case.

R. v. Gilf Greggain

Marc Latour reported allegations of historical sexual abuse to Constable Jeff Carroll of the Cornwall Police Service (CPS), against Gilf Greggain, his grade 3 teacher at St. Peter’s Elementary School. Although Mr. Latour provided the initial complaint and statement on June 23, 2000, he told (by then) Sergeant Carroll that he was prepared to proceed with his complaint only on March 19, 2001. This investigation has been discussed in detail in Chapter 6, on the institutional response of the Cornwall Police Service.

Sergeant Carroll completed his investigation and had a discussion with Assistant Crown Attorney Guy Simard on January 3, 2003. Mr. Simard advised that he required a full brief and all of the videotaped witness statements in order to assess whether there was a reasonable prospect of conviction. On the same day Sergeant Carroll told Mr. Latour that he had insufficient grounds to lay a charge, but that the Crown was reviewing the Crown brief and the officer would be in touch with Mr. Latour. The Crown brief and videotapes were submitted to Mr. Simard on January 6.

On February 12, Sergeant Carroll had a discussion with Crown Attorney Murray MacDonald. The Crown advised Sergeant Carroll that he had reviewed all of the evidence gathered in the investigation and determined there was no

reasonable prospect of conviction should charges be laid. Mr. MacDonald agreed with Sergeant Carroll's determination that there were not reasonable and probable grounds to believe that a sexual assault occurred. The Crown attorney's opinion was confirmed in a letter, prepared by Sergeant Carroll, dated February 12.

Mr. MacDonald testified that he had no independent recollection of this file. When asked about his confirmation of the belief that the officer had no reasonable and probable grounds, he explained:

You've noted another change in practice there that we—since the 1993 investigation, we've now in our office, and elsewhere in the Province, taken—making the—assume the practice upon request of providing our comments on the objective component of RPGs, and explaining the subjective component when asked.

As provided in the 1997 Crown Policy P-1, "Police—Relationship With Crown Counsel, the Crown's office should have kept notes on the opinion or confirmed its comments on the objective and subjective components of the reasonable and probable grounds test. Such notes may have explained why the Crown agreed with the officer's belief that he had no reasonable and probable grounds to lay a charge in these circumstances.

Sergeant Carroll testified that despite Mr. Latour's concern that he had observed Mr. Greggain in the presence of handicapped children, the officer did not have sufficient information to report this to the Children's Aid Society. Practice Memorandum, PM [2000] No. 4, dated March 31, 2000, was incorporated in the new Crown Policy Manual as of March 31, 2006. It provides that Crown counsel have a duty to report to the Children's Aid Society any case where there is a reasonable suspicion of child abuse or neglect, and that this duty to report is an ongoing obligation and cannot be delegated.

Mr. MacDonald was not asked during his testimony whether he had turned his mind to reporting the matter to the Children's Aid Society. It is clear that if Crown counsel has reasonable suspicion that a child is or may be in need of protection, it is "policy of this Ministry that Crown counsel should report suspected cases of children in need of protection."

The policy also states, "The issue of whether or not Crown counsel fall within the definition of persons who perform professional or official duties with respect to children in subsection 72(5) is unclear." I am of the view that Crown counsel fall within that definition and recommend that the practice memorandum be amended to reflect that they do.

No Charges Laid Regarding Albert Lalonde's Allegations

Albert Lalonde initially reported allegations of historical sexual abuse against Father Charles MacDonald on April 25, 1995. Detective Constable Norman Hurtubise, of the Ontario Provincial Police (OPP), took his statement at the Long Sault Detachment. Mr. Lalonde alleged he was abused by Father MacDonald while he was an altar boy at St. Columban's Church. Detective Inspector Tim Smith's notes of May 1, 1995, show that Detective Constable Michael Fagan called to advise him of the new complainant. On May 12, 1995, Detective Constable Fagan took a further statement from Mr. Lalonde. Both statements were forwarded to Crown Attorney Curt Flanagan on August 16, 1995, but no charges were laid.

As will be discussed below, several years later, Mr. Lalonde again came forward with his allegations, which were investigated by both the OPP and the Cornwall Police Service (CPS). On May 27, 2002, Detective Inspector Pat Hall advised CPS Staff Sergeant Garry Derochie in a telephone conversation that the OPP had statements from Mr. Lalonde going back to 1995 and that a Crown had determined there was no likelihood of conviction.

Albert Lalonde Allegations to Lorne McConnery

As discussed in the section "*R. v. Father Charles MacDonald: New Charges Laid and Trial*," Lorne McConnery was assigned the Father MacDonald prosecution in spring 2001. Mr. McConnery was assisted by Crown counsel Kevin Phillips. Mr. McConnery testified that sometime during the trial, Albert Lalonde's brother came to speak to him and Mr. Phillips. The Crowns provided him with some direction about reporting his allegations against Father MacDonald. After the conversation, Mr. McConnery learned that Albert Lalonde's complaint had previously been investigated.

Investigation of the Allegations

On May 17, 2002, Albert Lalonde gave a videotaped statement regarding his allegations of abuse against Father MacDonald to CPS Sergeant Jeff Carroll. This was four days after all charges in the Father MacDonald matter were stayed. Mr. Lalonde described three incidents of alleged abuse. Two of them were said to have occurred at St. Columban's Church, which was within CPS jurisdiction. Sergeant Jeff Carroll investigated both of these allegations.

The other alleged incident occurred at Centennial Park, which was outside of CPS jurisdiction. Sergeant Carroll received a letter from Detective Inspector Pat Hall on May 30 confirming that the OPP would investigate this occurrence.

Detective Constable Joe Dupuis attended Mr. Lalonde's residence on June 18, and Mr. Lalonde gave a statement to Detective Constables Dupuis and Don Genier at the Long Sault Detachment later that day. Both of these investigations were reviewed in detail in Chapter 6, on the institutional response of the Cornwall Police Service, and Chapter 7, on the institutional response of the Ontario Provincial Police.

At one point during his investigation, Sergeant Carroll wanted a Crown attorney to review the matter and determine if there was a reasonable prospect of conviction. Sergeant Carroll felt that based on the evidence he had, he did not have reasonable grounds to believe an offence had been committed.

Crown Review of the Allegations

Sergeant Carroll contacted the office of the Director of Crown Operations, Eastern Region, James Stewart, and was advised that Lorne McConnery would contact him. On July 16, 2002, Sergeant Carroll received a call from Mr. McConnery, who requested that the brief be sent to him at his Barrie office for review. On July 24, the officer prepared a package for the Crown attorney, which included a transcript of the statement of May 17, 2002, a summary of the interview he conducted of Dr. Luc Clement, Mr. Lalonde's personal physician, and the clinical notes of Dr. Richter, Mr. Lalonde's psychiatrist. In a covering letter, Sergeant Carroll wrote, "I am seeking your advice on the reasonableness of charging at this time given the longstanding difficulties with respect to identification and offence specifics."

Mr. McConnery testified:

So I received a brief from the Cornwall Police. I don't know if that was about the 2002 investigation alone, but certainly I read that brief cover to cover. I, at some point, became aware that there had been at least one earlier investigation or one earlier interview maybe is a better way to put it. I think there was some delay. It may not have been much of a delay, but I got what had happened earlier.

Sergeant Carroll did not meet with Mr. McConnery nor did he provide him with his police notes. He did not include Mr. Lalonde's school records or a wedding picture that corroborated one of the allegations. Mr. Lalonde had said that he had been abused after he served as an altar boy at a wedding that Father MacDonald had performed. Sergeant Carroll obtained the picture for the purpose of identification, but returned it to its owner without passing it on to Crown counsel. As I have found in Chapter 6, Sergeant Carroll did not provide Mr. McConnery with all relevant information from his investigation.

On November 15, Mr. McConnery spoke to Sergeant Carroll, who gave evidence of their conversation:

He told me that he had completed reviewing the file. He made it clear to me that he was familiar with this file. And exactly how and why, I didn't go into discussing with him, but he feels that this matter was investigated before and has been reviewed by Crown counsel in the past. He agreed with me that R&PG was not present, and, in his opinion, the likelihood of conviction was not present.

He told me that he had communicated this to the OPP as well and that he would respond to me in writing later on next week.

Following their conversation, the officer prepared a supplementary occurrence report dated December 11, 2002, which stated in part:

Mr. McConnery advised that he had completed reviewing the brief and found that insufficient grounds to lay a charge existed. Mr. McConnery advised that no reasonable prospect of conviction existed at this time given the fact that this complaint had been previously investigated and no new information had come forward.

Mr. McConnery prepared and forwarded his opinion on January 8, 2003, concluding:

In reviewing your brief, the O.P.P. brief and the voluminous Project Truth briefs involving allegations against Father MacDonald by Albert Lalonde, I feel your concerns are very well founded. The allegations of Lalonde surfaced and were investigated in the early to mid 1990's. Those charges were reviewed by investigators who did not believe reasonable and probable grounds existed then. A Crown review then supported that position.

Having reviewed this large volume of information, I find that your position that reasonable and probable grounds to lay criminal charges against Father MacDonald do not exist to be a reasonable and appropriate determination by you. While that decision ultimately remains a Police decision, your view that no reasonable and probable grounds exist herein seems well founded to me.

It is unclear to me why there is a difference between Mr. McConnery's opinion letter and the occurrence report prepared by Sergeant Carroll. The supplementary occurrence report states that no reasonable prospect of conviction existed, but the opinion letter does not address the issue of reasonable prospect of conviction. It responds to Sergeant Carroll's initial request for assistance in determining whether he had reasonable and probable grounds to lay a charge. This apparent discrepancy illustrates why it is good practice for Crown counsel to follow up their opinions to investigators in writing, as provided in Practice Memorandum PM [2005] No. 34, to ensure that everyone is clear on the opinion.

As is noted in Chapter 6, Sergeant Carroll confirmed that he did not review any of the Project Truth files other than prior statements provided by Mr. Lalonde. He also confirmed that he did not interview Father Charles MacDonald. I am of the view that the Crown did a thorough review of the file before deciding not to proceed with charges in this matter.

I am, however, concerned that the Cornwall Police Service and Crown counsel did not have the same materials in their possession when determining if there were reasonable and probable grounds to lay a charge or a reasonable prospect of conviction. Sergeant Carroll did not provide the Crown with his notes, the school records, or the wedding picture that might have corroborated the date and location of one of the allegations. The investigators from both police forces were not consulting with one another, and perhaps in these circumstances they should have. Both the OPP and the Crown had information and documents from their previous involvement with the Father MacDonald prosecution, and nothing was provided to Sergeant Carroll. When conducting joint or related investigations, police services should share the fruits of their investigations with each other and Crown counsel.

The Provision of Services to Victims

Many of the prosecutions discussed in this chapter would have benefited from having early involvement of victim/witness assistance resources. As will be discussed below, the Victim/Witness Assistance Program (VWAP) operated by the Ministry of the Attorney General was not in place in Cornwall during most of Project Truth, although some services were provided by the Ottawa VWAP office. VWAP was not implemented in Cornwall until 2001.

The Victim/Witness Assistance Program in Ontario

The mandate of the Victim Witness Assistance Program is “to provide information, assistance and support to victims and witnesses of crime throughout the criminal court process in order to improve their understanding of, and participation in, the criminal court process.”

The program received Cabinet approval on March 5, 1986, for the implementation of twelve Program sites in Crown Attorney's Offices across Ontario. Today, there are fifty-six Victim/Witness Assistance Program sites across the province.

The *Victims' Bill of Rights* was proclaimed as law on June 11, 1996. The Act supports and recognizes the needs and rights of victims of crime in both the criminal and civil justice system. Sonia Faryna, Director of the Victim Services Secretariat, described the principles set out in the *Victims' Bill of Rights*, which constitute the legislative foundation for a number of services that have since been developed:

Section 2 of the Bill of Rights, otherwise called the "statement of principles" specifies how justice system officials should treat victims at different stages of the criminal justice process. The statement of principles requires that victims:

1. Be treated with courtesy, compassion and respect for their personal dignity and privacy;
2. Have access to information concerning services and remedies available to victims;
3. Have access to information about the progress of criminal investigations and prosecutions and the sentencing and interim release of offenders from custody;
4. Be given the opportunity to be interviewed by police officers and officials of the same gender as the victim, when that victim has been sexually assaulted;
5. Be entitled to have their property returned as promptly as possible by justice system officials, where the property is no longer needed for the purposes of the justice system (for example, to carry out an investigation, trial or appeal);
6. Have access to information about the conditional release of offenders from custody, including release on parole, temporary absence, or escape from custody; and
7. Have access to information about plea and pre-trial arrangements and their role in the prosecution.

The Victim/Witness Assistance Program provides a range of services to victims of crime who are involved with the criminal justice system. These services are offered once charges are laid against an alleged perpetrator.

The Victim/Witness Assistance Program provides victims with information about their case and familiarizes them with the criminal court process and the various support services available. It informs victims about the different court

appearances and explains the distinctions between a pre-trial, a preliminary hearing, and a trial. Support services are also introduced to allow the victim to participate effectively in the process.

The Victim/Witness Assistance Program does not provide any therapeutic or counselling service but can refer victims to services that will help them recover from the trauma of the crime. Victims are responsible for approaching these services themselves.

VWAP Special Prosecutions

The Inquiry heard testimony from Cosette Chafe, who was the Manager of the Victim/Witness Assistance Program in Ottawa from April 1987 to November 2001, with a hiatus between June 1991 and September 1993 when she was seconded to the St. Joseph's Training School prosecutions. Around 1992–1993, she participated in the development of a protocol for the implementation of a Victim/Witness Assistance Program in multi-victim, multi-perpetrator cases. The purpose of the protocol was to establish additional guidelines for services in such cases.

The protocol sets out some principles and considers some of the issues that may arise in such cases, such as the passage of time and the risk of evidence being contaminated due to the complainants knowing each other. The protocol acknowledges how complex these prosecutions are and that they require dedicated resources:

In summary, these prosecutions are complex, time-consuming and demanding. They require special attention and should be handled by an experienced Victim / Witness Coordinator who is permitted to devote her entire attention to the case. Ordinarily this will require her to be relieved of her regularly assigned duties.

The VWAP policies and procedure manual provides that if a project is designated as a “special prosecution,” there may be additional resources and funds allocated to it. Ms Faryna testified that when the Ontario Victim Services Secretariat is considering setting up a Victim/Witness Assistance Program for any special prosecution, consideration is given to the resources already in place. Special prosecutions are described in the manual as follows:

Special prosecutions are normally designated as such because they involve several accused persons charged with serious offences against multiple victims. They are often historical in nature, often involve sexual offences and often involve crimes committed against children.

...

Special prosecutions typically require a substantial commitment of time, resources and expertise in order to respond effectively to the special needs of the victims and the special circumstances of the prosecutions. They also require a high level of collaboration and coordination among the Crowns, police officers and Program staff.

This section of the manual is intended to cover circumstances similar to those contemplated in the 1992–1993 protocol.

Project Truth Not Designated a Special Prosecution

Unlike the St. Joseph's Training School (Alfred) prosecutions, Project Truth was not designated a special prosecution. Robert Pelletier, one of the Alfred prosecutors, explained that because of the early identification of that case as a special prosecution, a dedicated VWAP team was assigned from the beginning. As a result, services offered in Ottawa were not affected, with the exception that the Director, Ms Chafe, was seconded to Alfred.

According to Ms Chafe, early identification is key for the establishment of special or additional services in a timely fashion: "the wheels of government move slowly, turn slowly, so timing is essential." She testified that in comparison to the St. Joseph's Training School prosecutions, there was no feeling of collaboration or coordination in Project Truth. There was a delay in requesting services, in obtaining funding, and in providing services. The Victim/Witness Assistance Program became involved only after most of the preliminary inquiries in the prosecutions had been completed.

Mr. Pelletier, who was involved in both the Alfred and Project Truth cases, explained the difference between them:

I think one of the complicating factors is that Project Truth was a work in progress and what began as three complainants against a local parish priest became a complaint by dozens of people against a local parish priest became a complaint by dozens of people against perhaps almost as many local figures.

The best example I could give from personal experience is our experience in Alfred Training School where we knew from the very beginning that there were several dozen suspects and several hundred complainants.

We knew that from the very, very start. So we assembled a team of five prosecutors and—locally. There were no conflict issues and assigned the cases. Eventually 20 were charged with 165 complainants. We divided them and we did them all in three years.

I am of the view that Project Truth quickly fell within the definition of a special prosecution as identified in the VWAP policies and procedures manual. Resources should have been deployed to Cornwall to assist investigators and prosecutors in dealing with the rapid and increasing number of victims as early as 1997.

Shelley Hallett's Experience With VWAP

By the time she became involved in Project Truth prosecutions, Crown Shelley Hallett had some experience in dealing with the Victim/Witness Assistance Program. In 1988, Shelley Hallett had been seconded to the Program for a period of six months. She was asked to take this position in order to help train Crowns with respect to the new provisions in the *Criminal Code* relating to child sexual abuse, as well as the evidentiary innovations introduced at the time such as the use of screens and closed-circuit television. Ms Hallett implemented these changes in courtrooms across the province. In or around 1991, she was part of the Attorney General's Advisory Committee on Victim's Issues.

Ms Hallett believed that the Victim/Witness Assistance Program had been extended to Crown Attorney's offices across the province and was quite surprised when she came to Cornwall and learned that VWAP was not in place. She became aware of the impact of the lack of VWAP services when Detective Constable Steve Seguin expressed his concern about the absence of appropriate counselling in the area for a victim of Project Truth.

Establishment of a Project Truth VWAP

In 1999, Dennis Lessard, the Regional Victim Services Consultant with the Ministry of the Solicitor General, advised Cosette Chafe of the need for VWAP services in Cornwall. Ms Chafe advised Cathy Finley, the Director of the Victim/Witness Assistance Program, who was to approach people within the Ministry of the Attorney General and attempt to secure funding. Ms Finley sent an e-mail to Project Truth prosecutors on December 23, asking them for the status of their cases and whether they felt there was a need for VWAP involvement.

Although no resources were available initially in the fiscal year to provide an office in Cornwall, Ms Chafe agreed to provide some limited services to specific prosecutions. She did this over and above her responsibilities at the VWAP office

in Ottawa. In particular, she acted as a liaison between the Crowns and the victims. She attended court with the victims, provided emotional support during the process, and provided referrals for counselling and other services as needed.

Ms Hallett, Ms Chafe, and Detective Constable Joe Dupuis met on May 10, 2000, and discussed the implementation of a Victim/Witness Assistance Program in Cornwall for the Project Truth prosecutions. Ms Hallett agreed to send a letter to the victims in her prosecutions about available victim services. Detective Constable Seguin provided her with their contact information.

On June 8, there was a follow-up meeting about setting up VWAP services for Cornwall in the future. Detective Constable Don Genier and Ms Chafe were among those participating in the meeting.

By July 2000, funds had been allocated for the provision of VWAP services in Project Truth prosecutions, and Louise Lamoureux was brought on in August 2000 to provide these services.

Deputy Attorney General Murray Segal testified that the concerns of individuals such as Detective Inspector Tim Smith and Ms Hallett about the lack of Victim/Witness Assistance Program services in Cornwall might have come to his attention:

I was made aware that there were concerns about the program—Victim/Witness Program in general, and that there was a need to provide support, understandably, for victims. The exact number of victims was not something that—as I’ve tried to indicate to you that was apparent to me from the outset and it took some time—to get a better handle on that.

VWAP Services in Specific Project Truth Cases

Ms Chafe testified that because Cornwall did not have an established Victim/Witness Assistance Program there was no way to access information about charges laid and court dates; she had to rely on communications from the Crowns or the police. In Ottawa, that information was available using the ICON system, a computerized system that tracks the progression of criminal offences in the courts.

When the Victim/Witness Assistance Program became involved, most of the preliminary inquiries in Project Truth prosecutions had been completed. Ms Chafe believed many of the victims declined services because they did not feel they needed them: “they’d gotten to where they were without us.” She thought the Program’s involvement in Project Truth prosecutions would have been different if services had been offered early in the process.

Detective Constable Seguin testified that a Victim/Witness Assistance Program would have been a useful resource. He explained that there was nobody to maintain contact with victims:

One thing we could have used for sure is what we refer to now as a VWAP, Victim Witness Assistance Program. We didn't have anybody assigned. That was the biggest issue, I think. We didn't have somebody who could be the hands-on person with the victims; regular contact.

Father Charles MacDonald Prosecution

As discussed earlier, once Project Truth prosecutions were brought to the attention of the Ministry, Cathy Finley, Director of the Victim/Witness Assistance Program, sent an e-mail to prosecutors offering services for Project Truth prosecutions.

Crown Hallett responded to Ms Finley's e-mail in January 2000, providing information about the status of the Jacques Leduc and Father Charles MacDonald prosecutions and requesting services for alleged victims in these cases. Ms Hallett also sent her a memorandum in February following up on her earlier request for services in the Father MacDonald prosecution. She advised that there were eight complainants in the case and an additional complainant had recently come forward.

Ms Hallett had further exchanges with Ms Chafe about the Father MacDonald prosecution and some issues that arose for complainants in that case. Ms Hallett provided Ms Chafe with transcripts, summaries of evidence from the preliminary inquiries, and indictments.

After she came on board in August 2000, Louise Lamoureux had the most contact with complainants from the Father MacDonald prosecution.

When Lorne McConnery took over the Father MacDonald prosecution from Ms Hallett, the Victim/Witness Assistance Program was involved. VWAP and the police were conveying information to the complainants. Mr. McConnery recalls being in contact with the VWAP workers.

It was discovered in early 2002 that VWAP had never contacted the initial three complainants in the Father MacDonald matter. Ms Chafe testified that VWAP was not aware of these individuals. She confirmed this with Mr. McConnery in an e-mail dated February 15, 2002, in which she wrote that she had the names of only six alleged victims in this case: C-4, C-8, C-2, Robert Renshaw, C-5, and Kevin Upper. Although she may only have had six names, Ms Hallett had advised Ms Chafe in February 2000 that there were eight complainants and another had come forward. This clearly illustrates that insufficient information was being shared between the Crown and the VWAP office. Because VWAP workers

did not have access to the ICON system, they were entirely reliant on being provided with court information by the police and the Crowns. At times, that process for the sharing of information failed and, as a result, services to victims failed as well.

Ms Chafe had a meeting with Mr. McConnery on March 1, 2002. According to her notes of the meeting, the Crown told her not to worry about connecting with the initial three complainants now: “they are o.k.” Ms Chafe never had contact with them. In my view VWAP workers should always be encouraged to participate in the process. I note that one of the three, David Silmsen, had walked out of a preparation meeting with Mr. McConnery a few days prior to this conversation.

In terms of contacts with specific complainants, Ms Chafe testified that she attended at an interview of C-2 on July 25, 2000, with Ms Hallett, Detective Constable Dupuis, and Christine Tier. She said that during the interview, C-2 said he did not need support from VWAP. Arrangements were made that the Crowns would deal with C-5, and so Ms Chafe had no contact with him. Ms Chafe testified that C-4 requested assistance for court appearances and assistance for his wife. Ms Chafe also had contacts with Mr. Upper regarding both of the suspects he made allegations against. Regarding C-8, as will be discussed below, the charges in respect of his allegations were withdrawn in April 2002. Ms Chafe testified that once charges are withdrawn, VWAP services are no longer provided.

Jacques Leduc Prosecution

Following the stay of proceedings in the Jacques Leduc prosecution, Ms Hallett sent a letter to the complainants and their parents and advised them of the appeal process. In the letter, she provided contact information for the Ottawa Victim/Witness Assistance Program office.

Claude Marleau's Allegations

Alain Godin recalled in his testimony that no Victim/Witness Assistance Program services were available in Cornwall during the course of the Project Truth prosecutions. Rather, the program in Ottawa was providing services, which he offered to Claude Marleau. He could not recall if Mr. Marleau used the services.

Mr. Marleau testified that an officer provided him with a pamphlet on victim services. He thought the information was impractical as it related to services available in Ottawa. At the time, Mr. Marleau lived in the province of Quebec.

When Mr. Marleau provided his initial statement to the Ontario Provincial Police, on July 31, 1997, no Victim/Witness Assistance Programs were offering

services in the Cornwall area. He said that after his first statement he had many questions and did not know what would follow or if charges would be laid.

By early 2000, when limited VWAP services became available for Project Truth cases, Mr. Marleau had been involved in the criminal justice system for some time. Ms Chafe phoned him on August 18, 2000, and offered VWAP services to him. According to Ms Chafe's notes of this conversation, Mr. Marleau said that he did not require their services, as he was familiar with the court process since he was a lawyer.

I comment elsewhere in this chapter on the fact that the police and Crowns treated Mr. Marleau as a lawyer as opposed to a victim. Robert Pelletier, in his original opinion letter, suggested that "Marleau, who is legally trained, be advised of the apparent difficulties with these prosecutions in order to obtain his fully informed views on the matter." He was first and foremost an alleged victim and, despite his profession, should have been treated as such.

In a contact with VWAP personnel on October 5, 2000, Mr. Marleau expressed frustration with the criminal justice system and lengthy adjournments. Mr. Marleau was advised that he would be kept posted on developments.

Ms Chafe testified that when a victim resides outside of the jurisdiction of the Victim/Witness Assistance Program, the office will direct the victim to their local VWAP office. If the victim resides outside of the province, VWAP staff will try to coordinate with victim services in the other province. The VWAP office should keep in mind that arrangements for services should be set up where the victim resides, and that an initial refusal of services can change during the investigation and trial process.

Jean Luc Leblanc Prosecution

By the time the Victim/Witness Assistance Program became involved in the Jean Luc Leblanc prosecution, it was already determined that the matter would proceed by way of a guilty plea. The Program could have been involved up to the sentencing phase, but only one victim wanted VWAP services.

Link Between The Men's Project and Victim Witness Assistance Program

In 1998–1999, the Ministry of the Solicitor General identified the need to provide support to the victims in Cornwall who had come forward with allegations as well as those who had not. In 1999, the Ministry began to fund The Men's Project, a counselling and support service for victims, for the duration of the investigations and court process. This was a good initiative by the Ministry. Ms Hallett and Detective Inspector Pat Hall attended a meeting with Dennis Lessard, and Rick Goodwin and Jacques Legault of the Men's Project, on September 9, 1999.

Following the meeting, Ms Hallett prepared a letter to inform alleged victims of the new counselling service and telephone support line established for male sexual abuse survivors in the Cornwall area. The services were going to be offered on a time-limited basis.

According to Ms Chafe, there was no relationship between The Men's Project and the Victim/Witness Assistance Program. The Men's Project was a community-based agency providing services to adult male survivors in Ottawa. The Men's Project received funding for services in Cornwall and the Victim/Witness Assistance Program referred people to those services.

Improvements for VWAP Delivery of Services

I heard evidence from many witnesses regarding issues surrounding the Victim/Witness Assistance Program. It is clear that for many reasons discussed in this section and other chapters, services to victims in the Project Truth prosecutions were inadequate and not offered in a timely fashion. I was surprised to hear of the delay in implementing VWAP services in Cornwall given the context of the investigations and prosecutions.

A new VWAP Policy and Procedures Manual was implemented in the spring of 2006. I note that there is a specific section on special prosecutions, which states:

Typically, the program can only support one additional staff at a time, province-wide, for dedication to a special prosecution. As a result, the Manager must refer any request for additional resources to the Regional Manager and not make any commitment to the local Crown Attorney or Regional Crown until resources have been identified and secured.

I have also heard evidence that there was a delay in securing funds and resources once the VWAP office of Ottawa agreed to become involved in offering services to alleged victims in the Project Truth prosecutions. As I have previously indicated, time is always of the essence in securing victim services, which can have an impact on the success of a prosecution and the well-being of an individual. My concern here is that if this one additional staff person is otherwise involved in a special prosecution somewhere in Ontario, there is no resource left within the program if a second special prosecution were to materialize. Ms Chafe also testified that the protocol on special prosecutions is not part of the 2006 Policy and Procedures Manual, although there is a reference to the protocol. The matter should be reconsidered to determine if the protocol should be inserted in the manual.

Conclusion

In examining the institutional response of the Ministry of the Attorney General and its employees, I had the opportunity to review a great deal of documentary evidence and to hear testimony from a number of Crown attorneys and complainants who were involved in investigative and court proceedings. Throughout this chapter, I have drawn conclusions about specific issues and I will not repeat all of them here. I would instead like to comment on the general themes that have become apparent as a result of my examination of the Ministry's institutional response.

This Inquiry was called to deal with a number of outstanding public concerns, including those related to the prosecution of alleged perpetrators of sexual abuse. In particular, there was a great deal of public criticism over the fact that only one person was convicted as a result of a major Ontario Provincial Police (OPP) investigation into sexual abuse, Project Truth. This Inquiry was also called in order to address rumours circulating within the community about whether certain high-profile individuals, including those within the local Crown attorney's office, had conspired to cover up allegations of sexual abuse.

After reviewing the evidence, it is my view that the allegations of conspiracy involving Ministry officials are unfounded. I have reviewed in detail the actions of Crown Attorney Murray MacDonald in providing advice to Cornwall Police Service (CPS) Constable Heidi Sebalj during the 1993 investigation into David Silmsen's complaint against Father Charles MacDonald. I also examined a number of prosecutions in which decisions were made that, in hindsight, perhaps should have been made differently. Cases of historical sexual abuse are inherently difficult to prosecute due to the passage of time, faded memories, and a lack of physical evidence. It is my hope that this chapter has helped explain the outcome of the Project Truth prosecutions, those related to Project Truth, and others that pre-dated the project.

I began this chapter with an exploration of various issues that arose in the 1970s and 1980s in relation to alleged perpetrators of sexual abuse, some of whom re-offended or were re-investigated in the 1990s.

In a number of instances within this period the Crown gave advice to officials in other public institutions, such as the Ministry of Correctional Services and the Children's Aid Society of Stormont, Dundas & Glengarry, about possible criminal behaviour of individuals connected to these institutions. The Crowns in these cases failed to keep a record of their discussions with these officials and did not provide their advice in writing. The absence of such records can be detrimental to later prosecutions involving the same alleged perpetrator. In addition, information about possible criminal conduct was not consistently passed

along to the police for further investigation. These cases thus demonstrated the need for a Crown policy to provide guidance on when Crowns should report allegations of sexual abuse to police for investigation and to clarify Crown reporting obligations under the *Child and Family Services Act*.

A number of themes can be identified in the pre-Project Truth cases of the 1990s. There were several instances in which the Crown provided an opinion to the police without having all of the relevant information, or the Crown provided an informal oral opinion rather than a written one. Both practices are inadvisable and can result in an incomplete review of the investigation and in Crowns overlooking possible charges.

Further, there were instances in which the separation of roles between the prosecutor and the police became blurred, such as when Crowns gave investigative advice to police, as Murray MacDonald did with Constable Sebalj. Although Crowns and police must work closely together, it is important that neither party unduly delegate their responsibilities to the other.

In this chapter, I also undertook a detailed analysis of the Crown's role in providing advice to the OPP during Project Truth and the subsequent prosecutions. Project Truth was a major multi-victim, multi-perpetrator historical abuse investigation, but it was not the first in Ontario.

Earlier in the 1990s, two other projects investigated similar subjects. Project Jericho in Prescott was a joint OPP/Prescott Police investigation of child sexual abuse. A team of professionals was set up at the outset to coordinate the investigations and prosecutions. A Crown attorney was on the team on a full-time basis. Similarly, the OPP investigated allegations of historical sexual abuse against young people at the St. Joseph's Training School in Alfred. In that case, a team of prosecutors from Eastern Ontario jointly assisted OPP investigators during their investigation and then prosecuted the alleged perpetrators.

Unlike these major investigations, Project Truth did not have a dedicated Crown or team of Crowns assigned to it. Consequently, the OPP did not have the assistance of a Crown who could provide direction to investigations, advise on issues that arose on a daily basis, or assist the police in identifying and following up on the linkages between the various suspects. The lack of a dedicated Crown or team of Crowns meant that no one ensured that consistent advice was given to police or that consistent decisions were being made in the various matters that arose throughout the prosecutions, such as issues of consent and disclosure. In addition, the Crowns assigned to Project Truth cases were balancing this work with unrelated prosecutions in other jurisdictions. They soon became overworked, which limited their ability to provide timely advice to the police and led to significant delays in some of the proceedings.

While all special projects have their challenges, a number of factors unique to Project Truth added to the difficulties in these prosecutions.

First, the local Crown's office was under investigation during Project Truth, which meant that it was unable to take on these prosecutions and could not provide assistance or office space to the Crown attorneys who did. Crown attorneys had to be brought in from outside the area and were not given proper office space or sufficient administrative support. As a result, they had to do a lot of case preparation in their hotel rooms.

In addition, the OPP asked Crowns to provide an opinion on every brief prepared during Project Truth. This strategy can be useful, given that Crowns can advise on the appropriate charges to lay or on further avenues of investigation. However, in a number of Project Truth cases, the officers lacked both objective and subjective belief in reasonable and probable grounds for charges. These requests for opinions added to the workload of the Crowns assigned and were perhaps not the best use of scarce resources.

The Crowns also had trouble providing full disclosure of all relevant investigative materials to the defence during Project Truth, in part because the police were unable to obtain some of these materials from CPS Constable Perry Dunlop. Complicating the matter was the fact that the OPP was investigating the CPS, and therefore did not provide the CPS with all relevant material in its possession that related to CPS cases, such as the Marcel Lalonde investigation. This limited the CPS's ability to share this material with the Crown. However, aside from these problems, it is clear that Crown attorneys lacked an adequate system for tracking disclosure of documents to the defence, and I have recommended that this process be improved.

In addition to the difficulties in obtaining notes from Constable Dunlop, the police and the Crown had to deal with the fact that complainants and witnesses were having contact with Constable Dunlop. This contact was particularly problematic after one alleged victim, C-8, disclosed that he felt pressured by Constable Dunlop to embellish his story.

Communication between the police and the Crown was essential in minimizing the challenges posed by Constable Dunlop's contact with victims and witnesses, and his delayed or incomplete disclosure of notes and other materials. Unfortunately, there was a complete breakdown of communication during the Leduc trial that led to a finding of wilful non-disclosure against the Crown. Although this finding was later overturned by the Court of Appeal, it had a serious impact on the remaining Project Truth cases because Crown Shelley Hallett was removed from them. This was a significant blow to these prosecutions. Her removal not only delayed the prosecutions and opinions that she had been assigned, but the project

lost the benefit of Ms Hallett's considerable experience in prosecuting cases of child sexual abuse. Further, Ms Hallett was assisted only by students or a junior Crown rather than by an experienced Crown attorney who could have taken over from her when that became necessary. Had she been working with a more experienced co-counsel, this person may have been able to carry on with the Project Truth prosecutions after Ms Hallett's removal from these cases.

Communication between the Crown and police is paramount to the functioning of the justice system and, should disagreements between the two arise, mechanisms or protocols should be in place to ensure a prompt and efficient resolution with minimal impact on prosecutions.

Delay was a significant issue during some of the Project Truth prosecutions. In some cases there were significant delays in providing the police with advice on Crown briefs, which can be attributed in part to overworked Crown counsel and a lack of resources. It must be emphasized that in historical cases, even though a lot of time may have passed since the abuse occurred, once a complaint is made all institutions must act in a timely manner. Although delay can be fatal to any case, it is a particular concern in historical cases. Alleged victims may lose patience with the justice system, and fragile complainants may have difficulty dealing with the stress of prolonged anticipation of a trial. Alleged perpetrators age and may die before their trials or become medically unfit to stand trial.

Two major cases were stayed on the basis of delay during Project Truth. In both the Father MacDonald and the Jacques Leduc prosecutions, disclosure issues and turnover among Crown counsel contributed to the delay. In the Father MacDonald case, there was the additional complication of further victims coming forward after the initial charges were laid. A decision was made to join the charges, which in hindsight may not have been advisable, but at the time was a calculated risk.

In addition, during Project Truth there was a significant amount of rumour and innuendo in the community fuelled by citizens, websites and MPP Gary Guzzo. The Ministry of the Attorney General's impartiality was challenged by some people due to the conspiracy allegations involving Crown Murray MacDonald and the disappearance of binders delivered to the Minister of the Attorney General's office. There were also rumours of an organized ring of abusers in the Cornwall area, and the OPP's outright denial of the existence of such a ring was in stark contrast to submissions being made by Crown counsel in court. The Ministry and the OPP had no co-ordinated media strategy. A dedicated Crown could have assisted with this task.

In this chapter I have attempted to address the substance of the rumours involving Murray MacDonald and those about the disappearance of the binders.

I have noted that rumours about Mr. MacDonald were unfounded and unfair, and I have set out the facts surrounding the disappearance of the binders, although I am unable to reach a definitive conclusion about what happened to them.

Finally, throughout this chapter I commented on the Crown's role in dealing with victims and ensuring that appropriate services are provided to them. Victims need someone who can explain the criminal justice system to them, help them prepare for their testimony, and keep them informed about the steps in the prosecution as it unfolds. Victims also require assistance in overcoming the effects of their abuse, and early referrals to counselling can have a positive impact. Prompt intervention from the Victim/Witness Assistance Program is essential, and it is unfortunate that these services were not made available early in the Project Truth investigation.

In addition, Crown attorneys require training in order to interact with victims in an appropriate manner. In particular, they need to understand that people alleging abuse by people in positions of authority can have a difficult time dealing with authorities throughout their lives. These individuals are not necessarily familiar with the court system, and the prosecution of their cases can be a difficult and stressful process for them. I recommend that consideration be given to having the designated Child Abuse Coordinator from each Crown attorney's office attend the joint training I am recommending for police, Children's Aid Society officials, and other individuals and institutions that work with victims of child sexual abuse.

It is my hope that this chapter has answered the questions of the public and provided the Ministry of the Attorney General with useful advice. I am optimistic that serious consideration will be given to my recommendations to ensure better co-operation between police and the Crown, to help future special projects run more smoothly, and to assist victims of historical sexual abuse participate more fully in the justice system.

Recommendations

Policies, Procedures, and Protocols

1. The Ministry of the Attorney General (MAG) should implement a practice memorandum on historical allegations of sexual offences or augment existing policies, procedures, and protocols, particularly Practice Memorandum [2006] No. 9, Sexual Assault and Other Sexual Offences, and Practice Memorandum [2006] No. 8, Child Abuse and Offences Involving Children, to ensure that they address historical cases of sexual assault/abuse¹¹ of children or young people.
2. MAG should implement or augment existing policies, procedures, and protocols to provide that allegations of sexual assault/abuse reported to a Crown counsel should immediately be turned over to police for investigation.
3. MAG should consider modifying its practice memorandum on recanting witnesses, PM [2002] No. 7, Recanting Witnesses, to provide direction to Crown counsel regarding situations where the witness is not recanting but is reluctant to proceed.
4. MAG should conduct audits of local Crown attorney offices to ensure compliance with practice memoranda that deal with sexual assault/abuse cases. Among other requirements, the audit should insist that each office has a protocol in place to ensure that:
 - complainants or the Victim/Witness Assistance Program (VWAP) person involved, or the liaison person as described in the recommendations of Phase 2 of this Report, are advised of significant steps in proceedings;
 - the office has developed a network of interagency contacts and mechanisms for sharing information and expertise;
 - the office has designated a Local Child Abuse coordinator and set out his or her role and expertise; and
 - the office has established and kept up to date local and regional protocols with police, CAS, and VWAP regarding historical sexual abuse cases.

11. The reference to sexual assault/abuse refers to the sexual abuse of children and young people, whether current or historical, unless defined otherwise.

File Control and Possession

5. MAG should clarify that prosecution files are the property of MAG and should remain in the possession of the Ministry. Crown counsel should not be permitted to retain possession or control of files when no longer involved in prosecutions.

Conflict of Interest

6. MAG should implement a practice memorandum that will provide direction to Crown counsel in identifying and dealing with conflicts of interest. The practice memorandum should also identify situations or cases that are to be referred to Justice Prosecutions.

Justice Prosecutions or Other Conflict-of-Interest Cases

7. MAG should secure adequate and sufficient staff, equipment, and temporary offices to permit Crowns to adequately prosecute Justice Prosecution and conflict-of-interest cases.

Crown Opinions

8. MAG should implement or augment existing policies, procedures, and protocols dealing with Crown opinions, particularly Practice Memorandum [2005] No. 34, Police: Relationship with Crown Counsel, to address the following issues: communicating with the investigating officer before rendering an opinion, opening a file, keeping a copy of the opinion, and ensuring that the opinion letter is available to the Crown counsel assigned to the file.

Disclosure

9. MAG should develop a uniform tracking system for disclosure, to be implemented in all Crown offices, to track the receipt of disclosure from investigators, the disclosure to the accused or to defence counsel, the description or content of the disclosure, and any disclosure updates provided.

Duty to Report

10. It is important the Crown counsel receive ongoing training regarding their statutory reporting duties to the Children's

Aid Society under the *Child and Family Services Act* to ensure that children at risk are protected.

11. MAG should take measures to ensure that Crown counsel are aware that as “solicitors,” they are considered “professional[s] performing official duties with children” under section 72(5) of the *Child and Family Services Act*, which means that any failure to report on their part is considered an offence.

Language

12. Complainants should be offered the opportunity to be accommodated in the language of their choice throughout the process. To ensure this choice is the complainant’s, the Crown attorney and/or other employees should not state their preference. If the complainant has difficulty expressing him- or herself in English or French, every effort should be made to provide accommodation by way of interpreters or otherwise.

Tracking System

13. MAG should implement or augment existing policies, procedures, and protocols with regard to tracking the service of documents received by the Ministry. The system is to ensure tracking of documents received, reviewed, and forwarded to appropriate authorities and officials within the Ministry.

Delays

14. MAG should consider implementing the recommendations from the Lesage/Code report on the issue of empowering a judge to rule at the early pre-trial stages of a proceeding.

Special Project Prosecutions

15. MAG should assign a dedicated Crown or team of Crowns to assist throughout the investigations and prosecutions in Ontario Provincial Police (OPP) special projects involving sexual assault/abuse, such as Project Truth.
16. MAG should ensure that Crown counsel assigned to conduct long and complex criminal prosecutions are provided with adequate resources and are relieved of other responsibilities.

Major Case Management

17. MAG should augment its major case resource document and adopt it as a formal policy or practice memorandum.

Major Case Resource Document

18. MAG's major case resource document should be augmented to include special considerations that may arise in regard to major cases in small communities, such as the prosecutor having to travel significant distances. In addition, the threshold for defining a major case and the factors that make a case "major" may be different in a small community than in a large urban centre.

Media Relations

19. MAG should implement and augment policies, procedures, and protocols related to media issues to ensure that media representatives speaking on behalf of both the police and Crown Attorney's Office disseminate a clear and accurate message to the public representing the position of both institutions in a major or high-profile case.

Joint Training

20. MAG should consider participating in some aspects of the reinstituted joint training for CAS workers and police officers on responding to historical allegations of abuse.

Recommendations for the Ministry of the Attorney General for Ontario and Other Public Institutions

Special Project Prosecutions

21. MAG and the OPP should work together to develop joint operational plans in special project prosecutions, such as Project Truth.

Major Case Management

22. MAG and the Ontario police agencies should review and compare their major case management protocols to identify and rectify inconsistencies and gaps.

Court Management Protocol

23. The OPP and MAG, in particular the Crown Attorney's office in Cornwall, should develop a court management protocol as soon as practicable. This protocol should address the specific roles, duties, and relationship between OPP officers and Crown counsel in relation to prosecutions, and should be reviewed triennially.

Child Protection Protocol, 2001

24. MAG is a partner in the Child Protection Protocol: A Coordinated Response in Eastern Ontario (July 2001). Since this protocol has not been updated, MAG should meet as soon as practicable with other partners to review and update the protocol. For those partners actively involved in the investigation and prosecution of sexual assault/abuse cases, consistent roles for the participants should be set out as well as guidance on the sharing of information between investigating bodies. The process of reviewing and updating the protocol should continue triennially.

The Process of Phase 1 of the Cornwall Public Inquiry

The Cornwall Public Inquiry was established by the government of Ontario on April 14, 2005, under the *Public Inquiries Act*.¹ I was appointed Commissioner of this Inquiry by Ontario Attorney General Michael Bryant. When a Commissioner is appointed to head an inquiry, he or she begins with no more than the Order-in-Council. In general terms, the Order-in-Council establishes the commission, sets out the mandate of the inquiry, and provides some guidance with respect to how its work must be done.

Thus, I began the Cornwall Public Inquiry with the words of the Order-in-Council and nothing else. The mandate required the Commission to inquire into and report on the events surrounding allegations of historical abuse of young people in Cornwall by examining the response of the justice system and other public institutions to the allegations, as well as to make recommendations to improve the response in similar circumstances. The Commission was also mandated to inquire into and report on processes, services, and programs that will encourage community healing and reconciliation in Cornwall.

I felt immediately committed to the work of the Inquiry, but where to begin?

In the interests of transparency and openness, and in the hope of providing some assistance to future inquiries, I thought it would be useful to set out the practical steps I took, along with Commission staff, to breathe life into the Order-in-Council. Similar volumes have been prepared for previous inquiries and they were of great assistance to me in preparing for and conducting this Inquiry.

In the main, this section of the Report provides an outline of the process of Phase 1 of the Inquiry.

1. Appendix A1, Order-in-Council 558/2005, April 14, 2005.

The Purpose of a Public Inquiry

The purpose of a public inquiry has been well explained in the reports of previous inquiries.² In the interest of brevity, I will simply highlight a few key points.

Public inquiries are often convened in the wake of public shock, horror, disillusionment, or scepticism in order to uncover the truth.³ This is the fact-finding, or investigative, function of a public inquiry. The events under investigation often involve some element of public controversy and a resultant loss of confidence in the public institutions. This calls for the need to establish an independent, thorough, and transparent review of the situation. In general terms, the goal is to find out what happened and what went wrong, and to look at what can be done to avoid similar occurrences in the future.

Public inquiries can also serve the policy-development process. They do this by considering public opinion, exploring policy options, and making recommendations about the future course of action. Most inquiries, such as this one, have dual roles: fact finding and proposing policy reform.

A further purpose of public inquiries is education. Because the work of an inquiry is carried out publicly, it can increase a community's understanding of the events in question. Education is also facilitated, particularly in inquiries that have a healing and reconciliation component, through community meetings and workshops organized by the Commission.

I think it fair to say that even inquiries that do not have a mandate to encourage healing and reconciliation hope that this is, at the very least, a side effect of their work. For some individuals directly affected by the events being examined, the inquiry process itself can be healing. Throughout the course of an inquiry, questions are asked and answered and sentiments expressed, sometimes for the very first time, and the community may engage in a dialogue. All of this may be the first step along the way to healing old wounds and mending damaged community relations. Regrettably, of course, the process of reliving past events can be very difficult for some; however, it is only with full participation that an inquiry process can function at its very best. This is why it is important to have all concerned groups, organizations, and individuals represented at an inquiry.

2. For example, the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry (Bellamy J), Ipperwash Inquiry (Linden J), and the Walkerton Inquiry (O'Connor ACJ).

3. *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 at para. 62, Cory J., dissenting.

A Public Inquiry Is Not a Civil or Criminal Trial

At first glance, the trappings and proceedings of a public inquiry may have the appearance of a trial. The hearings are held in a court-like setting: they are presided over by a Commissioner, who is usually a judge, and numerous lawyers examine and cross-examine witnesses.

Despite this outwardly trial-like appearance, a public inquiry is not a trial. This was a principle that I emphasized many times over the course of this Inquiry.⁴ As Commissioner, I can make findings of misconduct that are related to my mandate, but I cannot find anyone guilty of a criminal offence or civilly liable.⁵ This point is reinforced by the case law.⁶

This Inquiry was not the only process that arose from the events alleged to have occurred in Cornwall. There have been criminal investigations and proceedings and there are ongoing civil proceedings. As a part of this Inquiry, I had to look at these criminal investigations and proceedings. This was not for the purpose of trying or re-trying criminal allegations but solely to evaluate the response of the justice system and public institutions to allegations of abuse of young people.

Unlike criminal and civil litigation, the process of a public inquiry is ideally more investigative than adversarial. It is hoped that the parties will be equally committed to “getting to the bottom of things,” and will conduct themselves in a fashion as open and transparent as the inquiry itself. It is a reality, however, that public inquiries involve individuals, groups, and institutions, often with competing interests. And while a commission cannot make findings of guilt or innocence, or make findings related to civil liability, it can question the actions of individuals and institutions and make findings of misconduct in relation to these actions. A likely effect of this is some damage to reputation. This is one of the reasons that an inquiry must be procedurally fair.

4. See for example, Commissioner’s statements in Appendix P1, Opening Statement at the Hearings and Introduction to Processes in Phase 1 and Phase 2, November 7, 2005; P2, Introductory Remarks and Introduction to Processes in Phase 1 and Phase 2, February 13, 2006; and P14, Overview of Current Issues and Update on Planned Testimony, November 28, 2007; and Appendix K3, Ruling on Jurisdictional Motion, May 1, 2006.

5. Paragraph 7 of the Order-in-Council makes this eminently clear in that it states, “The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization.”

6. See for example, *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440 at para. 53, and more recently, *Hartwig v. Saskatoon (City) Police Assn. (Commission of Inquiry re Death of Neil Stonechild)*, [2008] 9 W.W.R. 615 (Sask. C.A.).

In this Inquiry, like others, I adopted a more informal approach to the evidence than I would employ sitting as a judge. Both the *Public Inquiries Act* and the Order-in-Council have directed me to do so. Despite this, I have strived to ensure procedural fairness and balance less formal rules of evidence with corresponding safeguards to ensure that rights are protected. I adopted the same approach in coming to my findings.

Several of the institutional parties were concerned that I evaluate their actions based on the standards and policies in place at the time the alleged events occurred, rather than assessing them on current, and perhaps more rigid, standards. To evaluate the actions of individuals and institutions based upon today's standards, given the increased knowledge, training, and education that has been acquired over the years, would be unfair. I have viewed all institutional response evidence in its appropriate time frame.

A public inquiry is rarely able to hear from every possible witness. In this Inquiry, much of the documentary evidence consists of notes and other documents whose authors did not testify. Some of these documents were police notes and as such, like *aide-mémoires*, they do not constitute all of the author's evidence. These notes, like others, are subject to errors with respect to dates and other important facts. If the author is not available, cross-examination on these matters is not possible. Thus, in making fact-finding decisions, I was careful not to make findings based solely on notes or other documents from individuals who did not testify. Every finding was made by considering all of the available evidence. In cases when documents were entered in the absence of evidence from the author, I looked for some corroboration, either direct or indirect, before finding that the facts from the documents were correct.

Despite the direction of the *Public Inquiries Act* and guidance from other commissioners to be less formal and more investigative, it is my observation that inquiries are becoming increasingly litigious. There are progressively more challenges to the jurisdiction of commissions of inquiry and judicial reviews of their rulings. Throughout this Inquiry, I issued a total of thirty-nine rulings, orders, and directions; there were four judicial reviews and one stated case arising from these decisions; and there were two appeals to the Court of Appeal. In addition, we attended the Ontario Divisional Court four times and the British Columbia Supreme Court once to address matters relating to one particular witness who was served with an interprovincial summons and against whom both civil and criminal contempt proceedings were brought. A number of recent inquiries, including this one, have had challenges to their scope or jurisdiction.⁷

7. See, for example, *Canada (RCMP) v. British Columbia (Commissioner)*, [2009] B.C.J. No. 1290 (S.C.); *British Columbia (Attorney General Criminal Justice Branch) v. British Columbia (Commission of Inquiry into the Death of Frank Paul – Davies Commission)*, [2009] B.C.J.

The increased time and costs associated with dealing with numerous legal challenges may defeat one of the purposes of a public inquiry, which is to get to the bottom of matters in an expeditious fashion.

The Decision to Establish the Cornwall Public Inquiry

In early 1994, the media began reporting on allegations of historical sexual abuse made by former altar boy David Silmsen against Father Charles MacDonald, a priest in the Diocese of Alexandria-Cornwall. A short time earlier, probation officer Ken Seguin had taken his life before allegations of historical abuse against him were investigated by the police. Mr. Seguin was a friend of Father Charles MacDonald and another alleged abuser of Mr. Silmsen. Mr. Silmsen had reported allegations of abuse against these two men to the Cornwall Police Service (CPS)⁸ in December 1992. The media coverage outlined a confidential financial settlement between David Silmsen, the Diocese, and Father MacDonald that resulted in Mr. Silmsen withdrawing his criminal complaint against the priest. This sparked rumours within the community and allegations of a cover-up by local institutions such as the CPS and the Diocese.

In January 1994, the Ottawa Police Service briefly examined the investigation the CPS had conducted of Father Charles MacDonald. It recommended that a thorough reinvestigation of the case be done by another police force.

Beginning in February 1994, the Ontario Provincial Police (OPP) investigated the allegations made by David Silmsen but laid no charges. In early 1995, as a result of the OPP investigation of the settlement, Malcolm MacDonald was charged with attempt to obstruct justice. Mr. MacDonald was the lawyer who had represented Father MacDonald on the settlement. Nobody else involved with the settlement was charged. When Malcolm MacDonald pleaded guilty to the charge, he was granted an absolute discharge. Following this, more alleged victims of Father MacDonald came forward, and in 1996 he was charged in relation to allegations of historical sexual abuse.

Perry Dunlop, a Constable with the CPS, began conducting an off-duty investigation into allegations of sexual abuse in June 1996, in part to support a multi-million dollar lawsuit against the CPS and others. Almost three years earlier,

No. 1469 (C.A.). Also see Appendix L1, *MacDonald v. Ontario (Cornwall Public Inquiry)* (2006), 214 O.A.C. 293 (Div. Ct.); and Appendix M2, *Ontario (Provincial Police) v. Cornwall (Public Inquiry)* (2008), 232 O.A.C. 251 (C.A.).

8. On October 27, 2000, the Cornwall Police Service (CPS) became the Cornwall Community Police Service (CCPS). Accordingly, in this chapter I have referred to the organization as the CPS with respect to matters pre-dating October 27, 2000, and as the CCPS with respect to matters after this date.

in the fall of 1993, Constable Dunlop had provided a copy of David Silmser's allegations against his former priest, Father MacDonald, as well as allegations against his former probation officer, Ken Seguin, to the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry (CAS) after he found out that the CPS had terminated its investigation of David Silmser's complaint.

In 1994, Constable Dunlop was charged under the *Police Services Act* for, among other things, providing Mr. Silmser's statement to the CAS. The charges against Constable Dunlop were later stayed, but his relationship with the CPS was forever changed. From 1994 onward, Constable Dunlop's difficulties with the CPS and his contacts with a number of alleged victims were widely reported in the media and well known in the community.

Constable Dunlop continued his private investigation of sexual abuse against young people. In December 1996, his lawyer, Charles Bourgeois, delivered some of the investigative work they had done to Chief Julian Fantino of the London Police Service. Chief Fantino turned these documents over to the OPP in February 1997. The Fantino Brief contained a number of individual complaints about sexual abuse as well as a claim that there was an organized group of powerful people within the community who were perpetrating and covering up allegations of abuse. These individuals were teachers, probation officers, police officers, a Crown attorney, priests, and other Church officials.

In the spring of 1997, the OPP began its "Project Truth" investigation. Its purpose was to examine the contents of the Fantino Brief and investigate the allegations of child sexual abuse and related criminal activity contained therein. At least sixty-nine alleged victims came forward, and fifteen men were eventually charged. Issues soon arose regarding the Project Truth investigation and the prosecutions. Only one person arrested as a result of Project Truth was convicted and a handful were found not guilty. Many cases did not proceed to a full trial on the merits for a variety of reasons: some elderly suspects had died or were too sick to proceed; in some cases the charges were withdrawn; and in others the trials were stayed for either delay or non-disclosure of evidence. Criticism was levelled at the OPP investigation by MPP Garry Guzzo, Constable Dunlop and his wife, and others. There continued to be widespread media interest.

Throughout the 1990s, allegations began to surface about cover-ups by the CPS or by the Diocese of other complaints of sexual abuse. In one of these cases, the alleged perpetrator was the son of a former CPS police chief. In another, the victim made it publicly known that the Diocese had transferred the priest who had abused him to another parish rather than properly dealing with the complaint. In yet another case, the alleged victim complained that neither the CPS nor the CAS had investigated her allegations of abuse against a former CAS worker and group home staff.

These cases, along with the number of alleged victims uncovered by Project Truth, suggested that there was a serious problem of sexual abuse in the community, and more particularly, a problem with the way that public institutions handled, investigated, and prosecuted complaints of abuse. Stories began to circulate attributing these problems to a massive criminal conspiracy.

In 2000, Mr. Guzzo called for a public inquiry to look into the circumstances surrounding allegations of abuse of young people in Cornwall and, in particular, the response of the police and other institutions to it. Segments of the community of Cornwall joined in, and thousands of citizens from the Cornwall area petitioned the government to inquire into the issues. It was the work of a coalition of individuals and groups that resulted in the Order-in-Council dated April 14, 2005, which established this Inquiry.

The preamble to the Order-in-Council sets out the general context for the Cornwall Public Inquiry:⁹

Whereas allegations of abuse of young people have surrounded the City of Cornwall and its citizens for many years. The police investigations and criminal prosecutions relating to these allegations have concluded. Community members have indicated that a public inquiry will encourage individual and community healing ...

As the hearings began, I heard submissions that the events alleged to have occurred in Cornwall had given rise to a great deal of rumour and innuendo and that it was difficult for the community to distinguish fact from fiction. Complicating this was that some of those said to have been involved with the alleged abuse worked within important public institutions such as the Diocese of Alexandria-Cornwall, boards of education, and the Ministry of Community Safety and Correctional Services. As a result, some members of the community had lost confidence in their public institutions. They were concerned about the existence of a conspiracy and attempts by powerful people in these public institutions to cover up allegations of abuse.

The community of Cornwall needed to clear the air with facts. It needed to know how the allegations of abuse had been handled by public institutions. It needed to heal and move forward. It is my hope that the work of this Commission will help to answer the questions that are important in the minds of the community members and that its recommendations will facilitate improved responses by public institutions in the future.

9. Appendix A1.

Principles Governing the Inquiry

A number of general principles have guided my work at the Cornwall Public Inquiry. These are thoroughness, expedition, openness to the public, and fairness. These principles are not unique to my work but have been used as guideposts by Commissioners of previous inquiries, and I have benefited from their direction and insight in this regard.¹⁰

Each of these principles can be considered in isolation, but in practice a balance must be struck between them. For example, an open hearing must be balanced with legitimate confidentiality and privacy interests. As will be outlined, given the subject matter of this Inquiry, issues related to confidentiality and privacy arose frequently.

The Mandate

The Mandate in General Terms: Two Phases

An inquiry's mandate is what shapes its work. An inquiry is captive to its mandate, subject to any additional constraints that are imposed by the law. The Order-in-Council establishing this Commission set out the following mandate:

2. The Commission shall inquire into and report on the institutional response of the justice system and other public institutions, including the interaction of that response with other public and community sectors, in relation to:
 - (a) allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations, and
 - (b) the creation and development of policies and practices that were designed to improve the response to allegations of abuse in order to make recommendations directed to the further improvement of the response in similar circumstances.
3. The Commission shall inquire into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall.
4. The Commission may provide community meetings or other opportunities apart from formal evidentiary hearings for individuals

10. For example, the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry (Bellamy J), Ipperwash Inquiry (Linden J), and the Walkerton Inquiry (O'Connor ACJ).

affected by the allegations of historical abuse of young people in the Cornwall area to express their experiences of events and the impact on their lives.

This was our starting point. From the language of the mandate, we immediately went to work trying to glean the parameters of the Commission's work. Immediately evident was that the mandate was divided into two separate parts, which I called Phase 1 and Phase 2. Phase 1 was the fact-finding phase. Put in general terms, this portion of the mandate required me to inquire into and report on the events surrounding allegations of abuse of young people in Cornwall by examining the response of the justice system and other public institutions to the allegations. I was also required to make recommendations to improve the response in similar circumstances. The work of this Phase of the Inquiry would be conducted by way of evidentiary hearings.

Phase 2 was directed toward the goal of community healing and reconciliation. Similar to the approach used in the Ipperwash and Walkerton inquiries, in Phase 2 we used a variety of additional resources to collect information on key issues that were identified in the hearings and by the community. Among other things, we commissioned research papers, held community meetings and educational workshops, established witness and counselling support programs, and provided the opportunity for individuals to give informal testimony as part of the process of healing. For my work in this Phase, I had the assistance of a policy director and an advisory panel.

While Phase 1 and Phase 2 were carried out somewhat simultaneously, the counselling program portion of Phase 2 will continue to operate until January 15, 2010, at which point its continuity will depend on whether or not my recommendations are acted upon.

Challenges With the Language of the Mandate

Unfortunately, there was some ambiguity in the language of the mandate. What was the time span we were to examine? What age range was contemplated by the term "young people"? What is "historical abuse"? These were but a few of the questions we identified early on.

In consultation with Commission counsel, I established parameters on the mandate that I believed were appropriate and, on some points, I sought the views of the parties. From very early in the Inquiry process, however, the question of what this Commission could and could not examine recurred on several occasions.

Is the Diocese of Alexandria-Cornwall a “Public Institution”?

Early in the hearings process, two issues arose that touched upon the meaning or scope of the mandate of this Inquiry. The first was whether the Diocese of Alexandria-Cornwall, a party with full standing at the Inquiry, was a “public institution” within the language of the mandate.¹¹

The Diocese of Alexandria-Cornwall submitted that it was a “community-sector” organization, rather than a “public institution” under the terms of the mandate. The significance of this distinction was the degree to which the Commission could examine the Diocese’s response to allegations of abuse. If the Diocese was a public institution, the Commission could examine its actions in response to allegations of abuse. If it was a community-sector organization, the Commission would be limited to examining the Diocese’s interaction with other public institutions. The scope of disclosure that could be requested by the Commission would also be restricted to the Diocese’s interactions with other public institutions.

Because counsel for the parties had conflicting views on the status of the Diocese, I invited them to make submissions on the discrete question of whether the Diocese was a “public institution” within the mandate of the Commission.

In my ruling, I found that the purposes of the Inquiry called for an interpretation of my mandate in the broadest sense and that, in the circumstances, an institution with sufficient public characteristics, quantitatively or qualitatively, would qualify as a “public institution” under the Order-in-Council. Considering this, I ruled that the Diocese of Alexandria-Cornwall possessed sufficient characteristics to be qualified as a “public institution.” In my view, the phrase “other public and community sectors” was a residual provision that allowed the Inquiry to canvass other bodies, organizations, or groups of people that might have been peripherally involved with the main participants—the public institutions—in the issues that were the subject of this Inquiry. Such organizations may have brought themselves under the mandate of this Commission by interacting with public institutions.

As a “public institution,” the response of the Diocese to allegations of historical abuse could be examined and recommendations could be made for how it could and should respond to such allegations in the future. I would not be investigating the Roman Catholic Church, its doctrine, or beliefs but the corporate entity of the Diocese as an employer of the priests who worked in the area. My decision to find the Diocese of Alexandria-Cornwall a public institution within the language of the mandate was based on the specific facts in Cornwall and not intended to have any broader application.

11. Appendix K2, Ruling on the Terms of Reference, May 1, 2006.

After my ruling that the Diocese was to be considered a public institution and not a community-sector organization for the purpose of this Inquiry, counsel for the Diocese indicated that his client was “of the opposite view.” In short, the Diocese disagreed with my ruling. It did not, however, apply for a judicial review of that ruling and its counsel indicated that the Diocese would “participate in the inquiry as if it were a public institution within the meaning of the Terms of Reference.” He submitted that this decision was based on public interest considerations, such as the avoidance of delay, and to address certain public criticism of the Diocese.

I initially recommended funding to the Diocese in December 2005. Following my public institution ruling, the Diocese requested an additional funding recommendation, in part because its role had been enlarged. Three further requests for supplementary funding followed. Other publicly funded parties also requested supplementary funding.

The Diocese participated before the Inquiry as a full public institution. It produced volumes of documents. When its interests were engaged, counsel for the Diocese attended the hearings and cross-examined witnesses. Its counsel also played an active role in the preparation of the institutional response evidence of the Diocese, assisting Commission counsel in locating relevant witnesses, arranging meetings and, of course, making written and oral closing submissions.

When he testified on September 2, 2008, Bishop Durocher stated the following:

... [O]ur Diocese has endeavoured to participate fully in this Inquiry and in that vein, I would want to invite you to make recommendations to our Diocese. Though I realize your recommendations are really meant for the government in a public inquiry, I would be open to receive any suggestions you might have to help us do a better job than was done in the past in the Diocese.

You might even consider making similar suggestions to all the bishops of Canada and address them to our National Episcopal Conference is [sic] you so wish, but I can tell you that I will take seriously any recommendations you have to make to us.

Yet in its closing submissions, the Diocese reiterated its contention that it was not a public institution within the meaning of the Order-in-Council. In its view, any factual finding that I were to make based on the premise that the Diocese is a public or other institution within the meaning of the Order-in-Council would be unlawful. This submission was unexpected and inconsistent with the factual record I have set out wherein the Diocese has participated as a full

public institution at the hearings. The legality of decisions of commissioners of public inquiries can, of course, be subject to court challenges. As I have noted, I issued thirty-nine decisions in this Inquiry, many of which were subjected to court challenges.

Can Victims and Alleged Victims Testify?

The second issue that was directed toward the scope of the mandate arose when I announced that the Commission would be calling victims and alleged victims of child sexual abuse to testify.¹² These witnesses would be asked to provide evidence about when they had reported their allegations, to whom they had reported, and whom they had reported, as well as to provide some brief details about the nature of the report and the resulting action or response of the public institutions and their employees and/or officials.

A motion was brought by Father Charles MacDonald and the Estate of Ken Seguin requesting an order that the Commission had no constitutional or other jurisdiction to inquire into specific allegations of sexual abuse or other wrongdoing made against them by alleged victims. Counsel for the applicants argued that the Commission would exceed its jurisdiction and delve into the area of criminal law by calling evidence from alleged victims. He further argued that by calling this evidence, the Commission could be trying or re-trying those criminal matters and might leave the applicants factually guilty.

I dismissed the motion, ruling that the Commission was entitled to call alleged victims of sexual abuse. As noted in *Starr v. Holden*, [1990] 1 S.C.R. 1366, the Supreme Court of Canada and other courts have consistently upheld the validity of provincial commissions of inquiry that may incidentally have an impact upon the federal criminal law and criminal procedure powers, as long as the pith and substance of the commission is firmly anchored to a provincial head of power and that a commission does not, purposely or through its effect, investigate and determine the criminal responsibility of specific individuals for specific offences.¹³ I found that calling alleged victims was essential in order for the Commission to fully investigate the institutional response of the justice system and other public institutions in relation to allegations of historical abuse of young people. The core of the Commission's mandate was firmly anchored to provincial heads of power and was directed at the institutional response of public institutions, including Ontario government institutions. I would not, and in fact could not, express any opinion as to criminal or civil responsibility in law.

12. Appendix K3.

13. *Ibid.*, May 1, 2006; also see *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3; *Jakobek v. Toronto (Computer Leasing Inquiry)* (2004), 188 O.A.C. 259. (Div. Ct.).

In my ruling, I noted my belief that the applicants' true concern lay not with the jurisdiction of the Commission to call the evidence at issue but with the protection of their reputation and privacy. While I acknowledged that these were serious concerns, they did not affect the jurisdiction of the Commission to call alleged victims for the purpose of examining the institutional response. The applicants were entitled to a fair process and could avail themselves of the rights afforded to parties with standing. I indicated that any specific concern they had would be dealt with on a case-by-case basis, applying the provisions of the *Public Inquiries Act*, the Order-in-Council, and the Rules of Practice and Procedure.

The applicants sought a judicial review by Divisional Court. The Divisional Court agreed that the evidence of the alleged victims was essential to a proper assessment of the response of the justice system and other public institutions to the allegations they had made.¹⁴

Does the Evidence of C-12 and C-13 Fall Within the Mandate?

In June 2007, as we were nearing the end of the evidence of victims and alleged victims, the next matter touching upon the scope of the Commission's mandate arose. The Commission indicated that it would be calling a witness who was expected to provide the following evidence: that she was sixteen years old when she was sexually abused by two males, aged sixteen and seventeen; and that the abuse took place on December 8, 1993, and was reported to the OPP the following day.

The OPP brought a motion asking me to state a case¹⁵ and to determine whether or not it was within the Commission's mandate to hear from this witness.¹⁶ The OPP's position was that the term "historical abuse of young people" in the mandate restricted the scope of this Inquiry to those situations in which the incident complained of occurred to a child, was committed by a person in authority, and was reported to an authority only much later.

The OPP was supported in its position by the Cornwall Community Police Service (CCPS), the Ministry of Community Safety and Correctional Services (MCSCS), and the Ontario Provincial Police Association. While the Ministry of the Attorney General also supported the interpretation put forth by the OPP, it

14. Appendix L1.

15. A "stated case" is a method of having the Divisional Court determine a question arising from the work of the Inquiry. The Commission itself may state the case or may do so upon the request of the person affected by the issue at hand. If the Commission refuses to state the case, the person requesting it may apply directly to the Divisional Court for an order directing the Commission to state a case. See *Public Inquiries Act*, R.S.O. 1990, c. P.41, s. 6.

16. Appendix K24, Ruling on the Evidence of C12 and C13, June 6, 2007.

suggested a compromise position whereby I would hear the evidence on the condition that the officers involved not be named, that the institutions not be required to respond, and that the evidence not form part of any notices of misconduct. The Citizens for Community Renewal, the Victims Group, and Commission counsel opposed the interpretation put forward by the OPP and the “compromise” position of the Ministry of the Attorney General.

Up to this point, we had already heard expert evidence addressing both current and dated reporting, we had heard from all of the institutional parties, including the OPP on its policies for responding to cases involving both historical and current reporting, and we had heard from victims and alleged victims who had reported their abuse historically or when it occurred.

I ruled that the mandate was not limited in the manner suggested by the OPP. Among other things, I noted that while the drafters of the Order-in-Council had certainly indicated that historical allegations of abuse would be a central part of the Inquiry, the mandate did not limit it to those specific cases. Furthermore, the mandate made no reference to allegations of abuse at the hands of persons in authority, nor did it define the age of the victims, but simply referred to young people.

To minimize any delay in the hearings schedule and to provide some closure to the witness, I asked that should the OPP intend to pursue the matter further it do so expeditiously.

THE DIVISIONAL COURT RULING

The OPP applied to the Divisional Court for an order directing me to state a case.¹⁷ The OPP was joined in its application by the Ontario Provincial Police Association, the CCPS, the MCSCS, and the Episcopal Corporation of the Diocese of Alexandria-Cornwall. The Ministry of the Attorney General participated as an intervenor. Neither the Citizens for Community Renewal nor the Victims Group, two publicly funded parties that argued this issue before me, participated in the arguments before the Courts. The issue of funding for parties to pursue matters arising from decisions of a commission of inquiry will be discussed later in this chapter.

The majority of the Court dismissed the application. It found that there was no support for the applicants’ submission that “historical” meant acts that had occurred a considerable time before they were reported and that “abuse” meant acts that were committed by persons in a position of trust or authority.

17. Appendix L4, *Ontario (Provincial Police) v. Cornwall (Public Inquiry)* (2007), 229 O.A.C. 238 (Div. Ct.).

The majority stated the following:

If one of the purposes of the Inquiry was to inquire into the institutional response of institutions like the O.P.P., one would have thought that the alleged inaction on the part of the O.P.P. would be grist for the Commissioner's mill. Merely because C12 reported the alleged sexual assault the following day does not, in our view, remove her evidence from the ambit of the Inquiry. Surely the alleged failure of the O.P.P. to respond to her complaint can be considered "reasonably relevant" to the mandate of the Inquiry.¹⁸

The majority went on to say that "the Commissioner is in the best position to assess the relevance of the weight to be attached to the proposed evidence of C12 and C13."¹⁹ It was satisfied I would ensure that the evidence would help me in carrying out my mandate.

THE COURT OF APPEAL RULING

On appeal, the Court of Appeal ruled that the evidence of C-12 and C-13 did not fall within the subject matter assigned to the Commission by the terms of the Order-in-Council, and furthermore, that it was not reasonably relevant to the subject matter of the Inquiry.²⁰

Specifically, the Court of Appeal stated the following:²¹

Properly construed, the OIC empowers the Commissioner to look into and report on institutional responses—past, present and future—relating to allegations of historical abuse of young people in the Cornwall area by persons in authority or positions of trust, including the allegations investigated in Project Truth as well as similar such allegations. Allegations that were reported at the time of the abuse, or years later, or both, would fall within this mandate. In other words, the Commissioner can look at the response of various institutions to allegations made and reported in the 1950s, as well as their response to allegations made for the first time or renewed in the 1990s.

18. *Ibid.* at para. 21.

19. *Ibid.* at para. 25.

20. Appendix M2.

21. *Ibid.* at para. 62.

In effect, the Court of Appeal's decision confirmed that the Commission's mandate was not limited to circumstances in which there had been historical reporting, nor was it limited to cases that were the subject of the Project Truth investigations. It did, however, serve to limit the Commission to examining cases in which the perpetrators or alleged perpetrators were "persons in authority or positions of trust." While these words were absent from the Order-in-Council, they were added by the Court of Appeal in several paragraphs of the decision. At times, the Court of Appeal inserted the word "sexual" between "historical" and "abuse," leaving some question, as will be discussed shortly, as to whether the mandate was limited to sexual abuse.

Based upon this interpretation of the mandate, the Court of Appeal held that C-12's evidence did not fall within the subject matter assigned to the Commission by the Order-in-Council. It went on to explain that although the evidence of C-12 and C-13 fell outside the subject matter of the Inquiry, it could nevertheless be admissible if it were found to be reasonably relevant to the subject matter of the Inquiry. Rather than refer the issue of reasonable relevance back to the Inquiry, which is often done, the Court of Appeal thought it would be "helpful to address it, in an effort to avoid further delays."²² The Court found that this evidence was not reasonably relevant and explained as follows:²³

Assuming that the evidence of C12 and C13 stands alone and is not the prelude to an avalanche of other such evidence from like complainants and their family members, I fail to see how it could reasonably advance the inquiry that the Commission had been asked to perform. Without wishing to minimize the seriousness of C12's complaint or the gravity of her allegations against the investigating officer, her evidence, if true, essentially comes down to one person having been treated inappropriately by a police officer in a case where she allegedly was sexually assaulted by other teenagers. Her evidence does not speak to systemic problems that may or may not exist in the way police respond to allegations of sexual abuse of young people by persons in a position of trust or authority.

THE EFFECT OF THE COURT OF APPEAL DECISION

As I indicated earlier, the Commission was nearing the end of the evidence of victims and alleged victims when this matter arose. Following the Court of Appeal's decision, the CCPS, the Children's Aid Society of the United Counties

22. *Ibid.* at para. 67.

23. *Ibid.* at para. 68.

of Stormont, Dundas & Glengarry, the family of Ken Seguin, and Father Charles MacDonald each submitted that the testimony of a number of witnesses already heard by the Commission fell outside of the Commission's mandate based upon their reading of the Court of Appeal's decision.²⁴ None of the other parties took the position that any of the evidence heard to date fell outside of the Commission's mandate, and some of those parties, including the Victims Group, the Citizens for Community Renewal, and the Coalition for Action vigorously opposed the submissions of the objecting parties.

The grounds for the parties' objections included one or more of the following:

1. The person alleged to have committed the abuse was not a person in a position of trust or authority.
2. The alleged victim did not fit within the term "young people" given his or her age.
3. There was no allegation of abuse or sexual abuse.
4. Historical abuse means historical sexual abuse only, and cannot include a consideration of physical and/or emotional abuse.

Based on these objections, I was asked to examine the evidence of seventeen witnesses who had already been heard by the Commission, and the facts concerning a police investigation that Commission counsel proposed to address within the hearings room, to determine if any of the evidence or proposed evidence would now fall outside of the Commission's mandate and if it did, whether it was, in any event, reasonably relevant.

I found that, with a couple of exceptions, the evidence already heard or proposed to be addressed fell within the framework given by the Court of Appeal.

It was unfortunate to be dealing with matters surrounding the Commission's mandate so frequently and so far into the hearing of evidence. All parties involved were required to spend considerable time and energy grappling with the question of what it was that the legislature intended this Commission to examine. Of course, this was a distraction from the fact-finding work of the Inquiry. In some respects, the mandate of a commission of inquiry must leave room for some interpretation because the required breadth of an investigation may not be known until the work begins. New information may arise during a commission's investigative work, which may require it to reassess its scope.

In my view, however, given that the wording of a Commission's mandate is so important in shaping its work, it is incumbent upon the drafters of the Order-in-

24. Appendix K31, Ruling in Relation to the Effect of the Court of Appeal Decision in *Ontario Provincial Police v. Cornwall Public Inquiry*, February 28, 2008.

Council to ensure that, as much as possible, the mandate is sufficiently defined. Clear, unambiguous language should be used, and given the need of inquiries to be responsive to evidence as it develops, Commissioners should continue to be given deference in their determination of whether evidence is reasonably relevant to their mandates.

Getting Started: Setting up the Inquiry

Location for Evidentiary Hearings and Office Space

At the outset, I believed that it was important that the hearings be held in Cornwall. I wanted the community most affected by the subject matter of the Inquiry to have easy access to our offices and the hearings room. We decided upon a designated historic building, referred to as the “Weave Shed,” which had once served as a cotton mill. The Weave Shed provided an excellent home for the Commission, having office space and a hearings room that required only slight modifications. The cost of rental was less than a third of that of inferior accommodations in Ottawa.

The disadvantage of deciding to situate the Commission offices in Cornwall was the travel and related expenses. While several lawyers for the parties were located in Cornwall, most travelled from Ottawa and Toronto. For those coming from Toronto, rail service would prove to be an adequate means of transportation.

For me, the importance of being in the community of Cornwall was paramount.

Hiring Members of the Inquiry Team

Commission Counsel

Because of the highly contentious nature of the subject matter of this Inquiry, great care was taken to ensure that Commission counsel were free of any conflicts. Many local lawyers were involved in the events that the Inquiry was to examine and some would be called as witnesses. As a result, an expanded search for counsel was required. It also meant that some counsel were hired from afar, which resulted in long absences from their loved ones and their homes.

With the assistance of my lead counsel, Peter Engelmann, we established a legal team that was up to the challenge at hand and that worked diligently to complete my mandate. As I explained in my statements to the public, Commission counsel play a special role in a public inquiry.²⁵ Unlike a Crown attorney in a criminal matter or a lawyer in civil litigation, the Commission’s role is to represent

25. Commissioner’s statement in Appendix P18, Update on the Progress of the Hearing Schedule and Phase 2 Research, September 5, 2008.

the public interest at the hearings.²⁶ Commission counsel do not represent any particular point of view, and their role is to present the best evidence available to assist in the completion of the mandate. With respect to impartiality, Mr. Justice O'Connor has stated the following:²⁷

While it is essential that commission counsel maintain an impartial posture, it is nonetheless necessary that they get to the bottom of what happened and why, and that they not be deflected by witnesses or their counsel who have a particular interest in the outcome. The balance that must be struck between impartiality and firmness is delicate but absolutely necessary to the success of the inquiry.

I think it is fair to say that discharging the functions of Commission counsel properly will always displease some of the parties. This is an inevitable result of this delicate balancing act, particularly when the subject matter is a sensitive one. In this Inquiry, the balancing act was consistently performed well.

Justice O'Connor has outlined a number of roles of Commission counsel, with which I agree. These roles are as follows:

- providing advice to the commissioner throughout the commission process;
- conducting, or at least supervising, the investigation that leads to the evidentiary hearings;
- maintaining open and continuous communication with all the parties who may be affected by the process and with those who have an interest in the issues raised by the inquiry;
- calling the evidence in the hearing in a thorough and even-handed manner;
- helping the commissioner write the report; and
- acting as the spokesperson for the inquiry to the media.²⁸

In this Inquiry, not only did Commission counsel play a vital role in organizing and calling the evidence but they also attempted to ensure that, to every extent possible, witnesses were dealt with in a caring and professional manner in order to minimize any further trauma to them. I was very well served by Commission counsel. They persevered and performed the role with professionalism and dedication.

26. Appendix B, Rules of Practice and Procedure (amended September 29, 2006), Rule 8.

27. Justice Dennis O'Connor, "The Role of Commission Counsel in a Public Inquiry" (2003) 22:1 Advocates' Soc. J. at 10.

28. *Ibid.* at 9–11.

Staff

I quickly found that running a public inquiry effectively and efficiently requires a full complement of staff. In the Commission offices, investigators, researchers, clerical staff, and lawyers all worked together to keep the hearings running smoothly.

Over the course of the Inquiry, it was necessary to add staff to keep up with the amount of work that had to be done. Had I to do it over again, I would have hired more staff at the outset, as the volume of work was at times overwhelming. Some key roles are listed below.

CHIEF ADMINISTRATIVE OFFICER

The chief administrative officer (CAO) was one of the first people whom I retained to work with me. From the outset, Monique Seguin was indispensable, being responsible for hiring support staff, communicating with the Weave Shed's building manager with respect to required modifications to our office space and hearings room, supplying the offices and hearings room with furniture and office equipment, having the website set up, and attending to many more practical and necessary matters. The CAO was responsible for all manner of financial matters as well.

Part way through the Inquiry, Ms Seguin left us for new employment. While we missed her immensely, her responsibilities were ably taken over by Anna DeVuono and Lise Kosloski.

POLICY DIRECTOR

I had the good fortune to work closely with Colleen Parrish in her role as policy director. As policy director, Ms Parrish, was responsible for all aspects of Phase 2, the healing and reconciliation portion of the Commission's mandate. This entailed, among other things, establishing and overseeing the counselling and witness support programs; organizing community meetings, workshops, education, and training sessions; and organizing the research component of the Commission's work.

SENIOR LEGAL ANALYST

Getting down to the business of writing my report would involve reviewing and considering a substantial amount of witness testimony. To assist in this task, I retained Ronda Bessner to oversee the process of summarizing the testimony and analyzing the evidence. Ms Bessner had the assistance of several junior legal analysts, who worked very hard to keep the witness summaries rolling in. Ms Bessner also assisted me in the preparation of the Phase 1 report. Ms Bessner has worked on many other public inquiries, and her wealth of experience was clearly evident.

Public Access/Communications

WEBSITE AND WEBCAST

In keeping with the principle of having an open and accessible inquiry, we promptly engaged the services of a webmaster to set up and maintain a website. The goal of the website was to keep the public up to date on the workings of the Inquiry. The website included general information about the Inquiry, a section for the media, the Rules of Practice and Procedure, the Order-in-Council, my rulings and statements, a hearings schedule, a witness list, closing submissions, and so forth. A portion of the website was also dedicated to the work of Phase 2 of the Inquiry.

While the hearings were in session, the website was updated daily to indicate the witness or witnesses scheduled for the following day. As well, the daily hearing transcripts were uploaded to the website by the end of each day. This was provided for in the Rules of Practice and Procedure.²⁹ The transcripts of *in camera* sessions were not posted on the website and were available only to those who were authorized in writing by the Commission.³⁰

Following the model set by the Ipperwash Inquiry, the website also included a live webcast of the hearings. For those who were not able to attend in person, the webcast gave them the opportunity to see the hearings unfold live. Not only was the webcast beneficial to the public, but it also allowed Commission counsel and staff, as well as counsel for the parties, to follow the Inquiry when they could not be present in Cornwall in person or when their standing did not permit their attendance.

I wanted the Commission to hear from people in the community who had important information to share. To facilitate this, the website provided a means for the public to communicate with us. The “Contact us” page of the website included a feedback link, whereby questions, views, and comments could be forwarded to the Commission. The messages were routed to the appropriate staff, and answers were provided by staff or Commission counsel when appropriate.

INTERVIEWS WITH THE MEDIA

It is not customary for members of the judiciary to have contact with the media. In June 2005, shortly after I was appointed Commissioner of the Cornwall Public Inquiry, I did hold a media briefing to inform the public of the work I had undertaken to get the Inquiry underway. I wanted the community to know that work had started on the Inquiry for which they had been waiting so long. Apart from this briefing, my dialogue with the public was limited to the comments

29. Appendix B, Rule 27.

30. *Ibid.*, Rule 30.

and statements I made throughout the course of the Inquiry. These statements were posted on the Commission website. Of course, my final comments are delivered by way of this Report.

Even though I did not give interviews, I directed lead Commission counsel Peter Engelmann and Pierre Dumais, also Commission counsel, to do so when requested. Often, the Inquiry hearings dealt with legal and technical matters, and it was my hope that Commission counsel could assist the media in reporting on all matters, technical or otherwise, in an accurate fashion and in plain language. At times, Commission counsel gave several interviews, and I appreciate the time they took to perform this function. This was an extra burden on top of their responsibilities in relation to the ongoing hearings.

MEDIA RELATIONS

To facilitate media contact, I took steps to hire a communications officer, Joan Weinmann. She was not a spokesperson for the Inquiry but was given the responsibility to interact with media outlets and perform related communications tasks, including handling media advisories and press releases. Media advisories and press releases were issued regularly to give information on the hearings schedule and witness list, to announce upcoming rulings, to provide details about Phase 2 matters, and so forth.

As I have said earlier, inquiries must be open and public in every sense. Media reports are one way in which the happenings of an inquiry are broadcast in the public forum, and it is therefore important for the media to be kept informed and to have the ability to ask questions. Early in the Inquiry process, a number of the parties expressed to the Commission their view that the pre-Inquiry media coverage of what was alleged to have occurred in Cornwall might have contributed to rumour and misinformation in the community. While I certainly had no control over what the media would report, I instructed Commission counsel to be available to the media and to communicate with them in an open and timely fashion.

The Commission's website contained a media page.³¹ This contained general information for media representatives, links to the media advisories and press releases, and a copy of the media protocol for dealing with confidentiality issues.³² The media protocol addressed the procedures to be followed when confidentiality issues arose.

I will discuss this in more detail later but note here that given the subject matter of this Inquiry, many sensitive issues were addressed. While openness in Inquiry hearings is preferred, this must be balanced with any harm that may be

31. Appendix F1, Information for Media Representatives.

32. Appendix F2, Media Protocol for Confidentiality Issues. Also see Appendix F3, Undertaking of Media to the Cornwall Public Inquiry.

done through the public dissemination of information. The Inquiry's Rules of Practice and Procedure contained a section dealing with confidentiality,³³ and during the Inquiry, I issued some directives relating to requests for confidentiality of victims' or alleged victims' identities.³⁴ Measures such as *in camera* hearings, the use of non-identifying initials, and the non-publication of a name could be, and were, used to address confidentiality concerns. On occasion, the media participated in motions concerning requests for publication bans.

During the course of *in camera* hearings, the audio and video stream was turned off and not broadcast to the public at large. To be present during *in camera* hearings, media representatives were required to sign an undertaking.³⁵

The Inquiry hearings were regularly covered by a number of local newspaper, radio, and television outlets. There was also some national coverage. A local cable station used the webcast feed to enable it to air the Inquiry hearings while in session. There was also some coverage of the Inquiry in the nature of online "citizen journalism."³⁶

A media room was constructed inside the hearings room to facilitate the work of attending media. The room could accommodate six to eight media representatives. It was equipped with a monitor and audio feed from the hearings room, two analogue telephone lines, and one copy of the daily transcripts.

SECURITY

A large portion of the work of an inquiry is investigation, and this investigative function often involves the collection of sensitive, personal, and confidential information. Several measures were implemented to preserve the confidentiality of the Commission's investigative work.

To maintain the confidentiality of information and documents, counsel for the parties were required to sign confidentiality undertakings with respect to documents and information disclosed to them in connection with the Inquiry's proceedings.³⁷ All additional lawyers and clerks of a firm that was assisting party counsel were also required to sign undertakings. Counsel could share documents

33. Appendix B, Rules 39–45.

34. Appendix K14, Directions on Process—Requests for Confidentiality of Victims' or Alleged Victims' Identities, October 31, 2006.

35. Appendix F4, Undertaking of the Media to the Cornwall Public Inquiry to Record an *In Camera* Hearing.

36. "Citizen journalism" was a term used by context-setting expert Mary Lynn Young. This is in contrast to mainstream media and generally refers to individual citizens reporting on their own about events. Ms Young was qualified at the Inquiry as an expert in media analysis with a special focus on the justice system.

37. Appendix B, Rule 34; Appendix G1, Undertaking of Counsel to the Cornwall Public Inquiry. Also see Appendix K10, Order Regarding Undertakings of Counsel and Parties, August 10, 2006.

and information with their clients on a need-to-know basis and only upon the client also signing an undertaking.³⁸ A breach of the terms of the undertaking could result in the imposition of sanctions, including loss or limitation of standing and/or funding. Similar undertakings were also required for counsel to a witness and witnesses.³⁹ As mentioned, members of the media were also required to sign undertakings.

Standing and Funding

Standing

I stated early on that I wanted to include as many people as possible in this Inquiry.⁴⁰ This was to ensure that I received all relevant information and perspectives. Having said this, those applying for standing had to meet the threshold set out in the Rules of Practice and Procedure.⁴¹

Individuals and groups were invited to apply for standing at the Inquiry by way of a Notice of Hearing.⁴² This Notice included a listing of the information to be included in the application and explained that applications for standing and funding in relation to both Phase 1 and Phase 2 of the Inquiry were to be submitted to the Commission by not later than 5:00 p.m. on October 25, 2005. Those individuals and groups that wished were then given the opportunity to provide oral submissions in support of their applications.⁴³ I heard these submissions on November 7, 2005.

As I alluded to above, the Rules of Practice and Procedure set out the criteria for standing in Phases 1 and 2. For Phase 1, I granted standing to persons or groups if I was satisfied that they were directly and substantially affected by Phase 1 of the Inquiry—in which event they might participate in accordance with section 5(1) of the *Public Inquiries Act*—or if they represented distinct, ascertainable interests and perspectives that were essential to my mandate in Phase 1 which I considered ought to be separately represented before the Inquiry, in which event the party might participate in a manner to be determined by me.⁴⁴

38. Appendix G2, Undertaking of Parties to the Cornwall Public Inquiry.

39. Appendix G3, Undertaking of Counsel to a Witness in the Cornwall Public Inquiry; Appendix G4, Undertaking of a Witness in the Cornwall Public Inquiry.

40. Appendix K1, Ruling on Standing and Funding, November 17, 2005.

41. Appendix B, Rule 8. Also see *Public Inquiries Act*, R.S.O. 1990, c. P.41, s. 5.

42. Appendix C1, Notice of Hearing.

43. Appendix C2, Notice: Hearings Set for Applications for Standing and Funding.

44. Appendix B, Rule 8. Also see *Public Inquiries Act*, R.S.O. 1990, c. P.41, s. 5.

For Phase 2 of the Inquiry, I granted standing to groups or persons if I was satisfied that they were sufficiently affected by Phase 2 of the Inquiry or that they represented distinct, ascertainable interests and perspectives that were essential to my mandate in Phase 2, and which I considered ought to be separately represented before the Inquiry.⁴⁵

I initially granted standing for Phase 1 on the basis of two categories: full standing and special standing. Each category of standing had accompanying rights, with those granted special standing having more limited rights. I later found that a third category, limited standing, was also required to permit counsel for witnesses to address discrete issues. For Phase 2, there were no separate categories. A party either had standing or it did not.

On November 17, 2005, I rendered my first decision on standing and funding, in which I granted some form of standing to thirteen of the fourteen parties that applied.⁴⁶ There was one grant of special standing, and one party was granted standing only for Phase 2. All other applicants were granted full standing.

One of the parties that applied for standing on the initial call for applications was the Coalition for Action on Child Sexual Abuse in Cornwall. I did not initially grant it standing, but I indicated that should it provide me with certain information that was lacking from its application I would reconsider. I directed Commission counsel to reconfirm that I would appreciate receiving its further written submissions by December 1, 2005, and that the group would be welcome to make oral further submissions on December 6, 2005. Counsel for the Coalition for Action wrote to Commission counsel indicating that the group would not be making further submissions. No one representing the group appeared before me on December 6, 2005. I took this to mean that the Coalition for Action had decided not to seek standing. This was unfortunate as it appeared that the group had shown a genuine interest in the matter. I indicated that I would leave the door open should the group decide to provide me with the further information I had requested.

We went about the work of the Inquiry, and in late August 2007, new counsel for Mr. Carson Chisholm and the Coalition for Action submitted a subsequent application for standing and funding. After hearing oral submissions on September 10, 2007, I granted the Coalition full standing for Phases I and 2 of the Inquiry, limited to those issues that directly affected its interests.⁴⁷ I did not grant Mr. Chisholm standing on an individual basis because his actions with respect to

45. Appendix B, Rule 54.

46. Appendix K1.

47. Appendix K27, Ruling on the Application for Standing and Funding of Carson Chisholm and the Coalition for Action, September 12, 2007.

particular investigations would be elicited through his testimony as a witness before the Inquiry.

Over the course of the Inquiry, I received seven more new applications for standing. Two applications were by school boards, both of which were granted standing.⁴⁸ One was by an individual who wished to challenge one of my decisions.⁴⁹ The remainder were applications by individuals who would be appearing before the Inquiry as witnesses. Three of these individuals were granted limited standing with respect to discrete issues.⁵⁰

In addition to this, one party, the Estate of Ken Seguin and Doug Seguin, requested that I reconsider its original application to extend standing to Phase 1. Mr. Ken Seguin was an employee of the Ministry of Community Safety and Correctional Services. In this case, limited standing was granted to cross-examine certain specific witnesses and only to the extent that the position of the employer Ministry was adverse to the memory of Mr. Ken Seguin.

In the end, there were fourteen parties with full standing, limited to their interests.⁵¹ One party had special standing, and four witnesses were granted limited party standing with respect to discrete areas. Participating as parties in the Inquiry were public institutions, community groups, and persons who had been investigated and charged in respect of child sexual abuse. Those with limited standing were employees of public institutions and a lawyer who provided independent legal advice to an alleged victim of child sexual abuse. While at times it seemed as though the Inquiry proceedings were slowed by the number of parties, I believe that in the end the participation and input from each were very helpful to me.

Funding

I was empowered by the Rules to make recommendations to the Attorney General regarding funding.⁵² Such funding was limited by the extent of the party's interest and whether, in my view, the party would not otherwise be able to participate.⁵³ I asked that applications for funding include the following information:

48. Appendix K8, Ruling on the Application for Standing of the Upper Canada District School Board, June 30, 2006; Appendix K13, Ruling on the Application for Standing of the Catholic District School Board of Eastern Ontario, October 24, 2006.

49. Appendix K9, Commissioner's Ruling on Mr. MacLennan's Application for Standing and Funding, August 10, 2006.

50. Appendix K36, Ruling on the Application for Limited Standing for Part 1 of the Cornwall Public Inquiry—Detective Inspector Randy Millar, September 5, 2008. Also see Appendix K26, Ruling on the Application for Standing and Funding of Ron Leroux, September 10, 2007.

51. Appendix D, List of Parties With Standing.

52. Appendix B, Rule 58. Also see Appendix A1, s. 10.

53. Appendix B, Rule 58; Appendix A1, s. 10.

- a. A statement of how the applicant satisfies the criteria for funding set out in the Rules of Practice and Procedure. In demonstrating why an applicant would not otherwise be able to participate without such funding, the application may include financial information and, for organizations, financial statements, operating budgets, the number of members and membership fee structure.

Applicants should also indicate whether they have contacted other groups or individuals to bring them into an amalgamated group, and the results of those contacts;

- b. A description of the purposes for which the funds are required, how the funds will be disbursed and how they will be accounted for;
- c. A statement of the extent to which the applicant will contribute its own funds and personnel to participate in the Inquiry; and
- d. The name, address, telephone number and position of the individual who will be responsible for administering the funds, and a description of the financial controls put in place to ensure that the funds are disbursed for the purpose of the Inquiry.⁵⁴

Any funding recommendations I made had to be in accordance with the Management Board of Cabinet Directives and Guidelines.⁵⁵ Given that most counsel were required to travel to Cornwall to attend the hearings, I recommended funding for reasonable claims in relation to travel expenses and disbursements.

In making my determinations on funding, I was guided by the overarching principle that the Commission must ensure that proper representation is provided for all parties whose participation in all or part of the Inquiry was required. If a necessary party were prevented from presenting its full story due to lack of financial resources, a disservice would be done to achieving the mandate of this Inquiry. As a result, I decided that if I had any doubts as to the need for funding, I would recommend rather than deny it and potentially exclude a party whose attendance and representation would be required.⁵⁶

At the first call for applications for standing and funding in late 2005, I received an initial eight requests for funding recommendations. In the main, these requests were related to funding for counsel and clerks. I did, however, receive two additional and somewhat unusual applications for funding. The Men's Project, an incorporated charitable, non-profit organization that provides a variety of victim services and other counselling programs for men and their families requested

54. Appendix C1.

55. Appendix A1, s. 10.

56. Appendix K1.

funding to hire a part-time interim manager of the Project. This interim manager, it was submitted, would assume some of the duties of the executive director, who would be required to devote time to the organization's participation in the Inquiry. I denied this request.⁵⁷ I was also asked by a number of parties to recommend funding for and/or provide some form of counselling for persons involved with the Inquiry. I was immediately supportive of this request but determined that it was an initiative more appropriately funded through the work of Phase 2 of the Inquiry. The Commission established a counselling support program by which counselling services were made available to all persons affected by the Inquiry.⁵⁸

Throughout the course of the Inquiry, I received and ruled upon a number of requests from parties to recommend supplementary funding. In the main, these requests were related to additional counsel, clerk, or paralegal time. I did, however, receive one request from a party to recommend funding for a policing expert to assist them in dealing with policing issues in a more informed manner.⁵⁹ I also received applications for counsel funding in relation to several witnesses.⁶⁰

While historically, the Ontario government has not provided funding for applications for judicial review, I was asked to recommend funding for a party to judicially review one of my decisions.⁶¹ Father Charles MacDonald, a party before the Inquiry, wished to review the decision in which I had held that victims and alleged victims could testify before the Inquiry.⁶² While I was not convinced that I had the authority to make funding recommendations in regard to judicial review applications, I found that nothing precluded me from making appropriate suggestions with respect to the conduct of the Inquiry and related issues.⁶³ Fairness dictated that parties should be on the same footing with respect to bringing issues related to the work of the Commission before the courts, regardless of their financial means. I therefore suggested funding for two counsel for Father MacDonald to bring a judicial review application, as well as for a number of parties who had indicated that they might seek to intervene in the matter before

57. *Ibid.*

58. Appendix P2.

59. Appendix K20, Ruling on the Application for Supplementary Funding: Policing Consultant, March 27, 2007.

60. Appendix K12, Ruling on Applications for Counsel Funding, October 18, 2006; Appendix K26.

61. I was also asked to recommend funding for a non-party to pursue a judicial review of one of my rulings. See Appendix K39, Reasons for a Ruling on an Application by H. Ken MacLennan to Obtain a Recommendation for Funding, January 6, 2009.

62. Appendix K3. Also see Appendix L1.

63. Appendix K5, Reasons for the Ruling on an Application by Father Charles MacDonald to Clarify Funding, June 13, 2006.

the Divisional Court. The Attorney General accepted my suggestion, noting that this was an extraordinary circumstance warranting an extraordinary response.

While I stated that this was an exceptional ruling and one that should not be viewed as a precedent, I am of the view that the Attorney General may wish to consider developing a process to assess funding applications with respect to judicial reviews made by funded parties in an Inquiry. There were a number of other reviews before the courts and in those cases only public institutions participated. Parties receiving funding, such as the Citizens for Community Renewal, the Victims Group, and the Coalition for Action did not appear despite actively participating in arguments before me. The Diocese of Alexandria-Cornwall was the only “publicly funded” party appearing before the courts. This led to situations such as the OPP challenge to the proposed evidence of C-12 and C-13, in which public institutions arguing for a restrictive mandate were the only parties making submissions to the courts. While the Commission retained and instructed external counsel for all Divisional Court and Court of Appeal cases, the role of a decision maker in making submissions to the courts on its own decision is rightly circumscribed. Given the profound importance of court decisions on public inquiries, particularly when mandate issues are in play, a mechanism should exist whereby publicly funded parties can apply for special funding to ensure that a balance of views are represented before the courts.

As has been the process in previous inquiries, an independent officer was selected to assess the accounts of participants who were granted funding.

Rules of Practice and Procedure

The Process of Arriving at the Rules

A public inquiry, though not as formal as a court procedure, nonetheless requires its own rules to ensure that the process runs smoothly, is thorough, and is efficient and fair. I had the benefit of reviewing the rules of other inquiries and I adapted those rules to suit the particular circumstances of our Inquiry.

As in numerous other commissions, we first prepared draft rules, which were posted on the Commission’s website. Once I made my decision on who would have standing, the parties were invited to comment on the rules. After a careful review of their comments, a number of changes were made, and the rules were finalized. On January 16, 2006, we sent out a notice to the parties that set out the amendments to the rules, and posted the “finalized” Rules of Practice and Procedure on the website.⁶⁴

64. Appendix C3, Notice to Parties: Amendment to Rules of Practice and Procedure, January 16, 2006.

Challenge to Rule 31

While I say “finalized” Rules, this was not the end of the matter. Two of the parties, the Cornwall Police Services Board and the Cornwall Community Police Service (CCPS) and the Diocese of Alexandria-Cornwall, still had concerns with Rule 31, which dealt with the production of documents to the Commission. I heard submissions on the matter on June 15, 2006.

Rule 31, as drafted, required the production of all relevant documents. In a situation in which a party objected to the production of any document on the grounds of privilege, the Rule outlined a screening process whereby Commission counsel would review the document(s) and determine the validity of the privilege claim. If the party that produced the document(s) disagreed with Commission counsel’s assessment as to privilege, the Rule provided that, on application, I might inspect the impugned document(s) and make a ruling, or refer the matter to a judge assigned by the Chief Justice of the Superior Court of Justice.

Our Rule 31 came out of a process initiated at the Walkerton Inquiry. The process, as I understand it, was an informal agreement between counsel wherein the parties would meet and permit Commission counsel to review the documents. If Commission counsel concluded that solicitor–client privilege applied, they would immediately return the document, and that would end the matter. The Ipperwash Inquiry codified this procedure in its Rules, and we adopted it for our process. The Toronto Computer Leasing Inquiry also had a similar provision to our Rule 31.⁶⁵

In short, the concern of the CCPS was that Rule 31 sought to compel the production of documents that were properly subject to solicitor–client privilege. The CCPS was supported in its motion by another party, the Episcopal Corporation of the Diocese of Alexandria-Cornwall. Commission counsel objected to the motion.

After careful consideration, I dismissed the motion of the CCPS.⁶⁶ The CCPS sought a review of my decision by the Divisional Court. On the date the matter

65. The Divisional Court upheld the screening process instituted by Commissioner Bellamy in the Toronto Computer Leasing Inquiry whereby Commission counsel, in the presence of the party’s counsel, could review the contents of boxes over which there were claims of solicitor–client. In the event of a dispute about relevance or helpfulness, the matter would be brought before the Commissioner. In the event of a dispute about solicitor–client privilege, the matter would be brought before a Regional Senior Justice for Toronto or his designate. The Divisional Court found that it was unlikely that the material in the boxes would be the subject of solicitor–client privilege, and in any event, the screening mechanism ensured that any solicitor–client privilege would be minimally impaired. See *Lyons v. Toronto Computer Leasing Inquiry – Bellamy Commission* (2004), 70 O.R. (3d) 39, 12 Admin. L.R. (4th) 157 (Div. Ct.).

66. Appendix K6, Ruling on the Motion Regarding Rule 31 of the Rules of Practice and Procedure, June 27, 2006.

was to be heard by the Court, discussions were held between the Court and the parties, which led to a decision to adopt a process to deal with claims of solicitor–client privilege. I agreed to this process rather than possibly bind future inquiries with a ruling on how privilege claims should be adjudicated.

In short, the new process required the party objecting to the production of any document on the basis of solicitor–client privilege to deliver a list setting out the pertinent details of the documents over which privilege was claimed. Commission counsel would review the list and make a determination. If Commission counsel did not accept the claim for privilege, additional material could be filed by the party to support its claim. If the dispute remained unresolved, the matter could be submitted to a Judge of the Superior Court of Justice.⁶⁷ It was never necessary to resort to a review by a Judge of the Superior Court.

On September 29, 2006, a further Notice to Parties was sent out regarding the amendment to Rule 31.⁶⁸ The now finalized Rules were posted on the website.

Preparing for the Evidentiary Hearings

Investigation

While there is always a pressure to begin hearings as quickly as possible, this must be balanced with the need to prepare. The Commission’s investigative work was well underway months before the hearings began and continued until the very end. This is because without thorough, focused investigation, an inquiry’s work runs the risk of going astray and missing key information.

We started the investigative phase of the Inquiry with two investigators on staff, but we quickly learned that more help was needed. Over the course of the Inquiry, we hired several more investigators as required.

The investigators were not alone in their work. They worked closely with Commission counsel in preparation for the hearings. Junior lawyers and researchers were also involved in the investigative process.

Disclosure and Management of Documents

For the work of an inquiry to be performed thoroughly, all relevant information must be gathered. Of that information, much is in the form of documents. Given the time span covered by this Inquiry, the number of parties, the institutional nature of some of those parties, the fact that there had been both police investigations and criminal prosecutions of some of the matters examined by the Inquiry,

67. Appendix B, Rule 31A.

68. Appendix C5, Notice to Parties: Amendment to Rules of Procedure and Practice, September 29, 2006.

and the fact that some of the parties were also engaged in civil litigation, the process surrounding documentary disclosure was no small task.

Obligation of the Parties to Produce

Certain rights and responsibilities flowed from becoming a party to the Inquiry. One of those responsibilities was to provide the Commission with all relevant documents in accordance with the Rules of Practice and Procedure.⁶⁹

After standing was granted, Commission counsel prepared summonses for documents, which were served upon the parties. To the extent possible, Commission counsel attempted to provide direction to the parties in terms of the areas to be covered in their documentary disclosure. From time to time, additional specific document requests were made of parties when investigation or witness testimony suggested further areas for examination.

When necessary, a number of summons for documents were sent to non-parties. For example, there were questions surrounding the cause of death of a number of individuals. A summons was sent to the Coroner for the Province of Ontario to see if any documents were available that might shed some light on these matters.

Document Management Staff and SUPERText

Early on, we decided upon the use of a software program called SUPERText for the electronic organization and searching of documents. Documents produced by the parties were scanned, sometimes by Inquiry staff, and if the volume was great, by the company supporting the software, and then uploaded to the program.

As the disclosure began to roll in, we soon discovered that to handle the volume of documents effectively and efficiently, we would need a dedicated staff member and software. We hired a document management administrator, who was responsible for dealing with all aspects of documentary disclosure.

Throughout the Inquiry, her role evolved and expanded. By the end, she had a dedicated team to assist with the management of incoming documents, documents that needed to be disclosed to the parties, preparation of materials for the hearings room, and documentary research.

On receiving relevant documents, the Commission had the concomitant obligation to provide them to the parties. Documents were disclosed to the parties electronically, either on a hard drive or on a compact disk. Certain documents were also provided to the parties by e-mail.

69. Appendix B, Rule 31.

Certificates of Production

Upon the completion of a party's documentary production, it was required to complete a certificate of production certifying that all relevant documents had been produced to the Commission.⁷⁰ Documents in the possession of the party but not produced, primarily on the basis of solicitor–client privilege, were to be listed along with the reasons for non-production. The Rule 31A process outlined in the Rules, discussed above, was used to resolve any disputes arising from privilege issues.

Issues and Process Surrounding Disclosure

Dealing with issues surrounding the production and disclosure of documents was no small task for the Commission. These issues were both time consuming and challenging.

VOLUME OF DOCUMENTS

The first issue was simply managing the volume of documents. This volume can be explained by, among other things, the number of parties, the historical nature of the matter, the police and other institutional investigations, and the existence of both civil and criminal proceedings. By the end of the Inquiry, the Commission had disclosed to the parties 71,956 documents, which amounted to a total of 374,558 pages.

Documents were provided by the parties in both paper and electronic form. All of these documents had to be reviewed and categorized. Those that arrived on paper had to be scanned and uploaded to SUPertext. Without a full-time document management administrator, it would have been impossible to manage the documents in an effective manner.

As I said earlier, there is always pressure to begin hearings as quickly as possible, but this must be balanced against the need to prepare. As Commissioner, I felt a great pressure to begin the hearings promptly. I knew that the community had already been waiting a long time for this Inquiry. I also knew, however, that if Commission counsel and staff weren't given enough time to sufficiently prepare in advance, we would run the risk of veering off course and missing critical information.

On February 13, 2006, the Commission began hearing context-setting experts. This expert evidence was then followed by evidence from the institutional parties on their corporate policies. This corporate policy evidence began on April 3, 2006.

70. Appendix H, Sample Certificate of Production.

On October 4, 2006, the first witness in the evidentiary portion of the hearings was called. This was under a year after my first decision on standing and funding. The considerable number of documents produced to the Commission on an on-going basis made getting ready quickly an onerous task, but one that was managed admirably Commission counsel and staff. They could not have worked any harder. Beginning any sooner was not an option. I suggest to Commissioners heading up future document-laden inquiries to “front load” in terms of staffing. Having enough staff at the critical start-up stage will facilitate a more efficient hearing as it will allow Commission and party counsel more time to analyze the voluminous documentary evidence and to have a better sense of the full nature of all the issues they will have to deal with.

ONGOING PRODUCTION AND DISCLOSURE

As I mentioned above, the summons process required the production of documents to be ongoing. This meant that throughout the course of the Inquiry, new documents were produced by the parties and then disclosed to the parties. One party produced a number of documents as late as January 2009. These documents were clearly relevant and had to be provided to the parties.

Receipt of documents at such a late stage can result in issues of process and fairness in the hearings room. For example, some debate surfaced over which documents could and could not be entered as exhibits, and certain documents may have been more properly put to a previous witness who had not had an opportunity to address them. While the rules of evidence are somewhat more relaxed in a public inquiry and we did our best to manage the situation, late production and disclosure is not ideal. Commission counsel did make efforts to facilitate timely production, but even more vigilance on this front may have helped to avoid late disclosure.

HANDWRITTEN NOTES

The nature of the documents also presented some challenges and issues. Handwritten police officer notebooks, as well as other handwritten materials, were difficult to search and compile. This occasionally lengthened the research time needed to do a thorough job. Commission staff did spend time coding certain aspects of these handwritten materials, which made them somewhat easier to search.

CONFIDENTIALITY AND PRIVACY CONCERNS AT THE DISCLOSURE STAGE

Confidentiality and privacy issues arose many times over the course of the Inquiry. The disclosure of documents to the parties did not mean that those documents would be tendered as evidence before the Commission or otherwise be made

public. Notwithstanding that confidentiality undertakings had to be signed before documents could be viewed, a number of parties argued that disclosure should not take place without significant editing.

In considering these arguments, I had to balance concerns relating to the disclosure of sensitive information with fairness requirements toward those affected by the Inquiry. I ruled that the following information should be redacted from the officer notes of the CPS and the OPP:⁷¹

- The name of confidential police informants and any information allowing the identification of police informants;
- Any information concerning police investigations unrelated to the Commission's mandate, and
- Information concerning covert police investigative techniques, police procedures, and any information that could jeopardize police officers' safety.

I also advised the OPP and the CCPS to provide the Inquiry with the names and details of complainants who the police indicated wished to remain anonymous. These matters would be reviewed by Commission counsel and possibly subject to further disclosure or ruled upon by me as to whether confidentiality measures were warranted.

Unfortunately, process of redaction was a time consuming. With one party, disclosure of their documents was delayed so that the process of redaction could be completed.

YOUTH CRIMINAL JUSTICE RECORDS

When it was time for the Commission to disclose the relevant documents it had received from the parties, there was some concern that disclosure of some documents was prohibited because they would tend to identify persons as young persons dealt with under the *Youth Criminal Justice Act* or its predecessor legislation.

With the assistance of counsel for the Ministry of the Attorney General, a motion was brought before the Youth Justice Court of Ontario and an order was issued that allowed counsel to parties and parties with standing to have access to this information, subject to undertakings not to make the records public.⁷² As was already discussed, the signing of an undertaking was a precondition to receiving disclosure from the Commission.

71. Appendix K11, Ruling on Redaction, August 30, 2006, p. 11.

72. Appendix O1, *Attorney General and The Cornwall Public Inquiry v. John Does* (July 25, 2006), Toronto (Ont. C.J.).

CLAIMS

As discussed earlier, Rule 31 provided a process for dealing with privileged documents. A number of parties were engaged in criminal and civil litigation related to the subject matter of this Inquiry. As a result, some parties had documents over which they claimed either solicitor–client or litigation privilege.

Unfortunately, the Rule 31A process for dealing with privilege claims was somewhat slow and arduous. The process was more akin to a formal civil litigation process and, in my view, not ideal for a public inquiry, which is intended to resolve matters expeditiously. A less formalized process, much like that used in the Ipperwash, Walkerton and Toronto Computer Leasing inquiries, is preferable.

CONSENTS

To acquire certain documents, Commission counsel had to obtain the consent of the individual to whom the records pertained. For example, consents were needed to obtain student records from school boards.

Determining the Stages of the Inquiry

As already discussed, the mandate of this Inquiry was broad and spanned a large time frame. I conferred with Justices O'Connor and Linden, Commissioners of the Walkerton and Ipperwash inquiries, respectively, for insights on how to approach the mandate of this Inquiry. I also examined their Reports. Their support and knowledge was very valuable to me.

After speaking with them, I believed that we had to organize our work in a logical way that would allow us to remain focused and to be thorough and efficient. Accordingly, early in the process, I set out a blueprint for the Inquiry. Part of this blueprint involved breaking the hearings into a number of stages. These stages were not cast in stone because I knew that as the investigations and hearings evolved, our path may well need to change to account for things that we learned along the way.

Context-Setting Evidence

When I spoke to Justices O'Connor and Linden, they reminded me that one of the purposes of a public inquiry is to educate. I thought that in order for us to better understand and properly assess the situation in Cornwall, it was essential that we hear from experts who would establish a context for full comprehension of the events that led to this Inquiry.

We called experts in every field for which I thought they would be of assistance. In the end, we called experts in the following fields:

- child sexual abuse and the impact of child sexual abuse on victims
- the evolution of legislation, law, and legal processes involving children and, in particular, child sexual abuse
- the reporting of abuse against children
- the child welfare response to allegations of child sexual abuse
- child sexual abuse and the institutional and community response to it
- social work, with a particular emphasis on community needs assessments
- the investigation of sexual offences and historical sexual offences and the training of police officers in this area
- the Ontario Police College
- the prosecution of child sexual abuse
- canon law, with a particular interest and involvement in the Church's response to clergy sexual abuse
- canon law and the historical background of clergy sexual abuse, with a particular interest in the spiritual and pastoral dimensions.

I believe that this evidence was well received and set the tone for the hearings.

Apart from these context-setting experts, Commission counsel also called an expert in media analysis with a special focus on the justice system.

Corporate Overviews

It was then important to learn historical and background information about the institutions whose responses were the subject matter of the Inquiry. This was what we called the corporate overview evidence. The focus of these corporate overviews was to review the relevant policies and procedures that were in place over time and how they evolved. The nature of the information covered varied from institution to institution, but in general terms, the corporate overviews covered areas such as the evolution of the corporate structure; policies in relation to hiring, training, and responding to allegations of child sexual abuse; interagency protocols; and so forth.

In essence, this evidence would assist me to better understand how the particular institutions functioned as well as serve as a benchmark by which we could measure the institutional responses.

Victim and Alleged Victim Evidence

One of the most delicate decisions I made was to call persons who had made allegations of child sexual abuse. While I understood the sacrifice that I was asking of them, I thought that the public needed to hear about their experiences

with the public institutions I was mandated to examine. Hearing their evidence was important for several reasons. The primary reason was to examine the response of the justice system and other public institutions. These witnesses would be asked to provide evidence about when they reported, to whom they reported, and about whom they reported, and to provide some brief details about the nature of the complaint and the resulting action or response of the public institutions and their employees and/or officials. I also thought it was important to put a face to their complaints and concerns and to give them the opportunity to be heard.

As already discussed, the Divisional Court agreed that the evidence of the alleged victims was essential to properly assess the response of the justice system and other public institutions to the allegations they had made.⁷³

During this stage of the evidence, I also thought it was appropriate to hear from a number of family members of persons who had made allegations of child sexual abuse.

Community Context Evidence

Following the evidence of victims and alleged victims, we turned to community context evidence. In Cornwall, there were individuals who, although most of whom were not themselves victims of child sexual abuse, nonetheless took an interest in the allegations of abuse that were surfacing. In some instances, they made public their view that there had been a disregard for, mishandling, or suppression of information about child sexual abuse in their community. They raised the profile of the allegations, both in the community and throughout the province. The views of these people were part of the backdrop to this Inquiry.

In this stage of the evidence, I wanted to hear from these key individuals, including Perry Dunlop, Helen Dunlop, Carson Chisholm, and others. As will be discussed later, unfortunately, we did not have the benefit of Mr. Dunlop's testimony.

In this section, I also wanted to hear evidence from an expert who would address issues surrounding the role and impact of the media in shaping community perceptions and responses and as a factor in the community environment.

Evidence of Persons Investigated or Charged

I thought it would be useful to have some testimony from persons who had been investigated or charged with respect to child sexual abuse or from their family members. These witnesses would not be asked about the facts underlying the allegations, investigations, or charges. Instead, they would be able to comment on the conduct of the institutions that dealt with them.

73. Appendix L1.

Institutional Response Evidence

After all of this, we needed to hear from employees or officials of institutions with respect to their responses to allegations of abuse against young people. In some cases, that testimony would be from institutional witnesses regarding the employment of an offender or alleged offender within an institution and how the institution and its officials responded both internally and in connection with other institutions. In other cases, it would be testimony regarding the handling of allegations generally, and the specific responses of the institutions.

Identifying and Preparing Witnesses

Context Setting and other Experts

The matters that I was to investigate and report on in Cornwall drew upon many areas, which I have listed above. Commission counsel undertook the task of locating and interviewing experts in these key areas. These witnesses were not selected to provide Cornwall-specific evidence. In fact, care was taken to ensure that they had no previous involvement in matters relating to the situation in Cornwall that this Inquiry was called to examine.

For most context-setting experts, a book of documents relevant to the given expert was prepared that generally contained a curriculum vitae, a biography, an outline of evidence, selected bibliography, and copies of the documents that would be referred to over the course of the witness's testimony. There was some variation on this depending on the specific needs of the witness. The book of documents was filed as an exhibit and was also posted on the Commission's website.

Apart from context-setting experts, the Commission also called an additional expert. One of the parties encouraged the use of a media expert and I was of the view that such an expert would be of assistance to me.

Corporate Overviews

Corporate overview evidence was prepared for all institutional parties. Because this evidence was mainly a historical overview of an institution and its structure and policies over time, Commission counsel worked alongside counsel for the parties in identifying appropriate witnesses and preparing the materials to be filed. It was Commission counsel, however, who had the ultimate responsibility of ensuring that the evidence was thorough and covered relevant points. For the most part, this cooperative effort worked quite well, as the parties also had an interest in ensuring that "their" presentation was as complete as possible. Commission counsel led this evidence.

This said, there were some challenges in putting together comprehensive presentations. Because of the large time frame covered by the mandate, a number of parties were able to provide only limited information by way of historical policies and procedures. In some cases, the Commission was told that the documents no longer existed, could not be located, or were no longer in the institution's control because of an amalgamation or restructuring. In addition, finding appropriate witnesses also posed some hurdles as the person(s) who may have had the best corporate memory were either deceased or suffering from failing memory due to advanced age.

Books of documents were also prepared for witnesses in relation to the corporate overviews. These books would generally contain a biography of the witness(es), an outline of evidence, and copies of available and relevant documents.

Witness Identification and Preparation for Remaining Witnesses

Preparing the remaining witnesses was, in many ways, more difficult. These witnesses were victims and alleged victims of child sexual abuse and their family members, the employees or officials of institutions responding to these allegations, and community members who had some degree of involvement in the matters alleged to have happened in Cornwall. It takes courage to come forward and speak in a public venue about painful past events. Testifying is not easy, and I offer my sincerest thanks to those who came forward to help us understand what happened in Cornwall.

As the Commission conducted its investigative work, possible witnesses were identified. Advertisements were also run on the radio and in newspapers inviting anyone who believed they might have information relevant to the Inquiry to contact the lead Commission investigator.

It is important to note that witnesses could avail themselves of the witness support program, which was an initiative of Phase 2 of the Inquiry. This program provided assistance to those who were called as witnesses at Inquiry by providing them with orientation to the physical setting of the Inquiry room; explaining what to expect from the hearings process; arranging or providing escort to and from the Inquiry on testimony day; escorting individuals to a private witness room during breaks in testimony; ensuring provision of refreshments during lunch breaks; touching base to ascertain well-being after testimony; informing witnesses about delays in bringing them forward to testify; and liaison with counselling support if witnesses were interested in obtaining counselling. Witnesses were first informed of this program upon meeting with Commission counsel. Details of the program were also included with the summons, if one was served, and posted on the Commission's website.

VICTIMS, ALLEGED VICTIMS, AND THEIR FAMILY MEMBERS

Some of the most time-consuming work for Commission counsel and investigators was meeting with victims and alleged victims of child sexual abuse.

Victims and alleged victims whose names arose during the Commission's investigative work were contacted by Commission investigators for preliminary interviews. A number of people also contacted the Commission directly, expressing the desire to speak about their dealings with a public institution in relation to allegations of child sexual abuse.

Given the mandate, it was determined that Commission counsel could lead evidence only of persons who had reported their allegations to public institutions. If they had not reported, there would be no institutional response to measure. I should note, however, that we did hear context-setting evidence about the reasons why people might find it difficult to come forward with allegations. While those who had not reported could not give evidence in Phase 1, they were invited to provide informal testimony in Phase 2.

Once it was determined that a witness had complained to a public institution and was prepared to testify, preparatory meetings began. It took time to conduct these meetings. Commission counsel wanted the witnesses to feel as comfortable and prepared as possible. Often, numerous meetings and frequent breaks were required. I am hopeful that the Phase 2 witness and counselling programs were of assistance to those who took advantage of them.

Following the model of the Ipperwash Inquiry, for each witness, a summary of anticipated evidence (AE) was prepared by Commission counsel. This document was provided to counsel for the parties in advance of the witness's testimony and was intended to give notice of the areas to be covered in the examination-in-chief. Unlike a will-state, the AE was not filed as an exhibit and a witness could not be cross-examined on its contents.

No matter what protection the Commission could offer in terms of confidentiality, a number of victims and alleged victims did not wish to testify, and in some cases, did not wish even to meet with Commission staff. In some cases, they had moved on with their lives, had medical conditions, or did not want their families or employers to know about or be affected by their allegations of abuse. As will be discussed below, in several cases in which a victim or alleged victim was unavailable to testify, Commission counsel determined that it was still appropriate to "tell their story" through a documentary overview.

Many victims and alleged victims who testified were represented by the Victims Group, a party with full standing at the Inquiry. In most cases, the presence of counsel was of assistance in facilitating the process of witness preparation, as witnesses' own counsel often had the opportunity to meet with their clients and review documents in advance of meeting with Commission counsel.

Several witnesses, not members of the Victims Group, had their own counsel. A number of others were unrepresented. Commission counsel often needed to spend more time with these witnesses preparing them for their testimony.

COMMUNITY CONTEXT

As with victims and alleged victims, a list of community context witnesses was compiled as a part of the Commission's investigative work. Investigators and Commission counsel met with these witnesses, AEs were prepared by Commission counsel and disclosed to the parties in advance of the witnesses' testimony.

EVIDENCE OF PERSONS INVESTIGATED OR CHARGED

As parties, and persons who were investigated and charged with respect to allegations of child sexual abuse, both Father Charles MacDonald and Jacques Leduc were invited to provide evidence at this stage of the Inquiry. As noted earlier, they would not be asked about the facts underlying the allegations, investigations, or charges but rather, would be asked to comment on the conduct of the institutions that had dealt with them. Both declined.

Because of his position as a priest in the Diocese of Alexandria-Cornwall, an overview of documentary evidence was prepared for Father MacDonald and filed as an exhibit during the institutional response evidence. Several additional overviews were prepared for deceased persons who had been investigated or charged. As these individuals were employees of public institutions that were parties before the Inquiry, the overviews were entered during the institutional response evidence.

Commission counsel contacted many other individuals who had been investigated or charged. All declined to provide evidence. As a further step, Commission counsel attempted to provide notice to all persons investigated or charged who were discussed during the Inquiry hearings.

EMPLOYEES AND OFFICIALS FROM INSTITUTIONS

With this category of witnesses, Commission counsel shared with counsel for each of the institutional parties a list of witnesses it wished to interview as a part of that institution's response evidence. Counsel was also asked for its input on the list of witnesses. In most cases, counsel were of assistance in scheduling meetings with possible witnesses. Counsel for witnesses were also in attendance at the preparatory meetings.

As for victim and alleged victim witnesses, AEs were prepared by Commission counsel and disclosed to the parties in advance of the witnesses' testimony. On occasion, there was some friction between Commission counsel and counsel for the witnesses in terms of the language of the AEs. While Commission counsel

considered and often incorporated comments from counsel on a draft copy, the AE was a Commission document. Commission counsel therefore made the final decision on its wording.

I had mistakenly thought that the institutional response evidence would progress more rapidly than that of the victims and alleged victims. I soon came to realize that testifying about one's involvement in these sensitive matters, even as an employee or official of an institution, was difficult for some. As with the victim and alleged victim witnesses, a number of institutional witnesses were unavailable to testify because of medical conditions. In some cases, motions were brought to excuse the witnesses.⁷⁴

Additional Documents Prepared and Disclosed to the Parties

AREAS TO BE CANVASSED

On occasion, the Commission had to call a witness who was unwilling to meet with Commission counsel in advance of appearing at the Inquiry to testify. In these cases, Commission counsel prepared a document that set out areas to be canvassed with the witness during the examination-in-chief. This document was provided to counsel to the parties in advance of the witness's testimony to give counsel some notice of what Commission counsel intended to cover with the witness. It was not entered as an exhibit.

OVERVIEWS OF DOCUMENTARY EVIDENCE

It is always preferable to have *viva voce* evidence. Over the course of this Inquiry, however, we found that for any number of reasons, such as medical conditions, concern about re-victimization, or death, witnesses may not be available to testify. When Commission counsel determined that the evidence of an otherwise unavailable witness was of sufficient significance to justify drawing it out in documentary form, Commission counsel prepared an overview of documentary evidence.

The overview document outlined a sequence or summary of events related to a particular individual, and its focus was the individual's contact with various public institutions. It was drafted in a neutral fashion. The source of the information included in the overview was the relevant documents that had been

74. Appendix K37, Reasons for the Ruling on the Application by the Diocese of Alexandria-Cornwall to Excuse Monsignor Donald McDougald, October 20, 2008; Appendix K34, Ruling on Motion by Ron Wilson to be Excused as a Witness, July 24, 2008; Appendix K33, Ruling on the Motion to Excuse Ron Lefebvre—Cornwall Community Police Service, July 2, 2008; Appendix K38, Reasons for the Ruling on the Motion to Excuse Ron Lefebvre—Cornwall Community Police Service, November 26, 2008.

produced by the Commission, and these documents were appended to the overview. The overview of documentary evidence was read into the record and the appended documents were made exhibits.

There were a number of reasons for preparing the overviews. First, they were to provide me with a starting point to review the appended evidence. Second, they were to assist the parties in identifying relevant evidence from our database in relation to the institutional response, and thereby to better understand the scope of the issues and themes that would be examined during that stage. This would help maximize efficiency, fairness, and thoroughness. Finally, the overviews were to assist the public in following the evidence.

When Commission counsel first proposed to present an overview of documentary evidence, it was with respect to C-3, an individual who had reported to a number of public institutions that he had been abused when he was a young person. For medical and other reasons, he was unavailable to testify. One party brought a motion objecting to the overview being made an exhibit. I ruled that I had the authority to receive overviews of evidence, that there was no prejudice in entering the overview as an exhibit, and that it should be entered as an exhibit for reasons of transparency and openness, so that, subject to any confidentiality measures in place, it was available for all to review.⁷⁵ I placed an important caveat in my reasons, which was that the evidentiary value of the overview was admittedly less than that of the documents used in its preparation, and in the case of conflict between the overview of C-3 and the documents, the content of the documents would clearly prevail.

In making any findings for the purpose of my Report, I always relied on the actual documents appended to the overview of documentary evidence, along with other evidence, rather than on the text of the overview itself.

A draft of the overview was always circulated to counsel for the parties for comment. Commission counsel would review the comments and make those changes they thought were appropriate. Counsel for the parties may not always have been completely satisfied with the final version. The caveat that the evidentiary value of the overview was less than that of the documents used in its preparation served to quell some of their concerns.

Twelve overviews were prepared over the course of the Inquiry. While they were certainly not a substitute for *viva voce* evidence, I found them to be of assistance to me. I am hopeful that they were also of assistance to the parties and the public.

The need for an overview for Mr. Perry Dunlop was identified after he was found in contempt. Several efforts were made by Commission counsel, and by

75. Appendix K23, Ruling in Relation to the Overview of Documentary Evidence of C-3, May 29, 2007.

counsel to the parties, to draft an overview document that would be acceptable to all parties concerned. Despite repeated efforts and much discussion with counsel for the parties, consensus was never achieved. No overview of documentary evidence was finalized or filed. The parties were advised that there would be no overview, and they were invited to address any issues arising in respect of Mr. Dunlop and his interactions with all public institutions in their final submissions.

TESTIMONY FACILITATION OUTLINE/OVERVIEW

A facilitation outline was prepared for Mr. Tom O'Brien, who was a former executive director of the Children's Aid Society of the United Counties of Stormont, Dundas & Glengarry. Mr. O'Brien had a number of medical conditions that prevented him from testifying for any great length of time. A number of parties agreed that hearing from Mr. O'Brien was important. As a result, it was necessary to expedite his testimony as much as possible, while still ensuring that it was thorough and that the parties had an opportunity to cross-examine.

To reduce the time required for examination-in-chief and to set out key themes and issues, Commission counsel prepared a document that included both an overview of the relevant documentary evidence and an outline of the witness's recollections. Documents referred to within the facilitation overview were referenced. When the source of the information was the witness's recollection, it was indicated as such.

Keeping in mind the limited time Mr. O'Brien had to testify, the facilitation overview was read into the record in the absence of the witness and entered as an exhibit. Mr. O'Brien then attended, was sworn, and adopted the content of the document. Commission counsel proceeded to examine him in-chief on several areas and cross-examination by the parties continued as usual, subject to the medical accommodations he required.

FACTUAL OVERVIEWS

Another form of document that was prepared and filed as an exhibit before the Commission was a factual overview. The Order-in-Council establishing the Inquiry provides that "[t]he Commission may, to the extent it considers advisable, refer to and rely on ... factual overview reports prepared by any party."⁷⁶ Factual overviews were documents prepared by parties, not the Commission.

There were two factual overviews prepared and filed in these proceedings. The Ministry of Community Safety and Correctional Services prepared a factual overview that was intended to bring together in one document an inventory of policies and procedures by which the Ministry governed its institutional

76. Appendix A1, s. 5(b).

response to allegations of abuse. As well, it was to provide some very specific instances of how allegations were handled, including when people came forward with allegations, what they said, how they were dealt with, and to whom they were referred.⁷⁷

A factual overview was also prepared by the Catholic District School Board of Eastern Ontario (CDSBEO). It addressed historical information concerning former employees and students of the Board, as well as its predecessor, the English section of the former Stormont, Dundas & Glengarry County Roman Catholic Separate School Board, and the institutional responses to allegations of historical abuse as contained in the CDSBEO files and Board records.

Summonses and Search Warrants

Summonses and Search Warrants Generally

The *Public Inquiries Act*⁷⁸ empowers a commission to issue summonses to witnesses. The Inquiry's Rules of Practice and Procedure also provided that "[w]itnesses may request that the Commission hear evidence pursuant to a summons, in which case a summons shall be issued."⁷⁹

Summonses were offered to all witnesses.⁸⁰ In some cases, a summons was important to facilitate a witness's attendance because the conduct money received upon service of the summons would help to offset any expense the witness would incur as a result of attending. For some witnesses, summonses were also required to justify their absence from work, although many institutional witnesses indicated that they did not require one. There were also a number of witnesses who were served because we had some concern that they would not attend and wanted to ensure that they did.

All witnesses who received summonses appeared or provided a lawful excuse for their non-appearance, save and except Mr. Perry Dunlop. On a few occasions, the Commission summonsed persons to attend at the Commission offices to produce documents. There was no need for the individual to appear as a witness; the Commission was simply seeking the production of the documents. When summonses are related to the production of documents only, any concern

77. A number of parties objected to certain content of the Ministry's factual overview on the basis that it was outside of the Commission's mandate. See Appendix K30, Ruling in Relation to the Factual Overview of the Ministry of Community Safety and Correctional Services, February 25, 2008.

78. R.S.O. 1990, c. P.41, s. 7.

79. Appendix B, Rule 21.

80. Appendix I1, Summons to Witness.

counsel may have with regard to the necessity of the individual to attend as a witness will be alleviated. Any stress on the part of the individual served will also be mitigated.

Pursuant to the *Public Inquiries Act*, the Commission also had the power to seek search warrants from the Ontario Superior Court of Justice.⁸¹ No search warrants were executed over the course of the Inquiry.

Perry Dunlop: Summons and Contempt Proceedings

Unfortunately, efforts made to have Perry Dunlop voluntarily attend to give evidence before the Commission were unsuccessful. Because I was of the view that the Mr. Dunlop and his wife, Helen, were clearly involved in and concerned with the events that gave rise to the calling of this Inquiry, I directed Commission counsel to take steps to have them summonsed in their home province of British Columbia. This required applying to the Ontario Divisional Court for an order pursuant to section 5 of the *Interprovincial Summonses Act*⁸² to have the summonses certified.⁸³ The Supreme Court of British Columbia then adopted the summonses pursuant to section 2 of the *Subpoena (Interprovincial) Act*.⁸⁴ The Dunlops were to appear before the Commission on September 17, 2007.

After the summonses were served, staff of the Commission began communicating with Helen Dunlop for the purpose of assisting the Dunlops in making travel and other arrangements to come to Cornwall to give evidence before the Commission. Lead Commission counsel offered to meet with the Dunlops in British Columbia or Cornwall to prepare their evidence and to assist them in finding counsel should they so wish. Commission counsel also offered to make a request that the Commissioner make a recommendation to the Attorney General that the Dunlops be represented at the Inquiry by a lawyer of their choice and that this lawyer be funded by the government.

In advance of their testimony, the Dunlops were provided with a document that covered many of the points that Commission counsel intended to cover with Perry Dunlop during his examination-in-chief.

81. R.S.O. 1990, c. P41, s. 17(2).

82. R.S.O. 1990, c. I12.

83. Appendix N1a, *The Honourable G. Normand Glaude, Commissioner of the Cornwall Public Inquiry v. Perry Dunlop and Helen Dunlop* (August 21, 2007), Toronto, 07-CV-337534 PD2 (Ont. S.C.J.).

84. R.S.B.C. 1996, c. 442; Appendix N1b, *The Honourable G. Normand Glaude, Commissioner of the Cornwall Public Inquiry v. Perry Dunlop and Helen Dunlop* (August 27, 2007), Vancouver, S075758 (BC S.C.).

The Dunlops refused Commission counsel's offer to meet in British Columbia or in Ontario. On September 17, 2007, the Dunlops arrived at the Commission. Mr. Dunlop took the stand, was affirmed, and read a prepared statement. He then refused to answer any questions asked of him by Commission counsel. I gave Perry Dunlop an opportunity to reconsider his refusal to testify and asked him to reappear the following day. He did appear, but again indicated that he was not prepared to answer any questions. He also refused my offer of seeking independent legal advice.

On September 19, 2007, and September 20, 2007, Perry Dunlop attended the Commission during the examination and cross-examination of his wife. I asked him to re-attend the next day to resolve the issue of his testimony. On September 21, 2007, Perry Dunlop again took the stand. On this occasion, he advised that he was not prepared to answer questions at that time, but requested leave to obtain independent legal advice about his options. I granted him this opportunity and ordered him to return on October 9, 2007.

To allow Perry Dunlop to remain at home and make whatever arrangements were necessary to minimize the impact on him and his children, I directed Commission counsel to travel to British Columbia to prepare Perry Dunlop. Commission counsel communicated with Helen Dunlop by e-mail about meeting with her husband in British Columbia. Helen Dunlop indicated that they were seeking legal advice and either she or their lawyer would contact Commission counsel. Helen Dunlop was also communicating with Commission staff about travel and other arrangements for herself and her husband to return to Cornwall on October 9, 2007.

As the date of October 9, 2007, approached, Commission counsel had still not received a response to their offer to meet with Perry Dunlop in advance of his testimony. In correspondence with the Dunlops, Commission counsel indicated that if Perry Dunlop did not intend to testify for medical and/or other reasons, or if he required a postponement, that he advise the Commission at that time, before significant funds were expended on travel arrangements. Commission counsel also outlined that the Commission's participants and service providers required notice of the Commission's schedule, and should hearing time become available, the Commission would like to be able to use that time by hearing from other witnesses. Without notice of Perry Dunlop's intentions, hearing time might be lost. Helen Dunlop replied, among other things, that she had not yet heard from their lawyer and would contact Commission counsel when she had.

On October 5, 2007, the last business day before Mr. Dunlop was to attend to testify before the Inquiry, his counsel brought a motion in the Supreme Court of British Columbia for an order:

- a) Declaring void *ab initio* the Summons issued against Perry Dunlop by the Ontario Superior Court of Justice dated August 21, 2007 and which the Supreme Court of British Columbia adopted as an Order of that Court, by Order dated August 27, 2007 (the “Interprovincial Summons”);
- b) Setting aside the Order of August 27, 2007;
- c) Staying the Order of August 27, 2007 until a full hearing of the application.

Justice Smart of the Supreme Court of British Columbia dismissed Perry Dunlop’s motion in oral reasons delivered late on October 5, 2007.⁸⁵

On October 9, 2007, Perry Dunlop attended before the Commission. After taking the stand, Perry Dunlop advised that he had sought legal advice. He was permitted to read a prepared statement, at the end of which he indicated that he would testify by reading his will-state (prepared in 2000) into evidence. He indicated that he was not prepared to answer the questions of Commission counsel and other counsel and to fully participate as a witness in the Inquiry. I did not allow him to simply read his will-state and not be examined and cross-examined. As discussed earlier, public inquiries have a fact-finding function. This function would surely not be served if questions could not be asked of him and if his evidence could not be tested by cross-examination.

Following Perry Dunlop’s refusal to answer questions before the Inquiry, a case was stated to the Divisional Court. The Court issued oral reasons on November 19, 2007, culminating in the order of December 7, 2007. In finding Perry Dunlop guilty of civil contempt for refusing to answer questions before the Commission, the Court stated the following:

Mr. Dunlop has given no legal reason for his refusal to answer questions. He refused to answer questions because he said that he has no faith in the Ontario justice system or the mandate of the inquiry; he is a “scapegoat”; the process is a cover-up; he was forced to appear against his will; and he could add nothing to his “will state”. In our view, he has provided no lawful excuse for his refusal to answer relevant questions.⁸⁶

85. Appendix N1c, *The Honourable G. Normand Glaude, Commissioner of the Cornwall Public Inquiry v. Perry Dunlop and Helen Dunlop* (October 5, 2007), Vancouver, S075758 (BC S.C.).

86. Appendix N2a, *Cornwall (Public Inquiry) v. Dunlop* (2007), 231 O.A.C. 189 (Div. Ct.) at para. 8.

Mr. Dunlop was ordered to reappear on January 14, 2008, to answer questions asked by Commission counsel and counsel for parties with standing. He was also ordered to attend before the Divisional Court to deal with the appropriate punishment.

Mr. Dunlop did not appear before the Commission on January 14, 2008. Nor did he appear before the Divisional Court for sentencing on January 28, 2008, as ordered. On January 28, 2008, the Divisional Court issued a warrant for Mr. Dunlop's arrest and made an order requesting the Attorney General's assistance in making submissions to the Court regarding criminal contempt for Mr. Dunlop's disobedience of the Court's order that he appear before the Commission on January 14, 2008, and that he appear before the Court for sentencing.⁸⁷

Police gave Mr. Dunlop the opportunity to travel to Ontario voluntarily for his next Court appearance of February 20, 2008. Mr. Dunlop refused the opportunity, insisting that he be arrested.⁸⁸ On February 17, 2008, he was arrested before a large crowd assembled in front of his residence in Duncan, British Columbia.⁸⁹ Mr. Dunlop had orchestrated the time and place of his arrest so that there would be a large public gathering of his supporters and media to witness the arrest and for his supporters to publicly express their disapproval of it.⁹⁰

On February 20, 2008, the Divisional Court convened with Mr. Dunlop present. He was again granted the opportunity to testify before the Inquiry, this time on February 25, 2008. In the court room, in the presence of a full public gallery, Mr. Dunlop once again refused to testify.⁹¹ He has indicated that he would rather go to jail than testify.⁹²

Arguments were made regarding the issue of criminal contempt and the penalty for civil contempt for failing to testify on October 9, 2007. The Court reserved judgment until March 5, 2008. During that time, Mr. Dunlop remained in custody in Ontario.

On March 5, 2008, the Divisional Court offered Mr. Dunlop yet another opportunity to purge his contempt. Again he refused. The Court went on to find Mr. Dunlop guilty of criminal contempt. In its decision, the Court noted that Mr. Dunlop's disobedience of the order of the Court was "open, continuous

87. Appendix N2b, *Cornwall (Public Inquiry) v. Dunlop* (2008), 165 A.C.W.S. (3d) 652 (Ont. Div. Ct.).

88. Appendix N2c, *Cornwall Public Inquiry (Commissioner of) v. Dunlop* (2008), 90 O.R. (3d) 524 (Div. Ct.) at para. 26.

89. *Ibid.*

90. *Ibid.* at para. 30.

91. *Ibid.* at paras. 25 and 31.

92. *Ibid.* at para. 33.

and flagrant.”⁹³ The Court further explained: “[N]ot only did Mr. Dunlop fail to appear as ordered, he publicized his intention to disobey the order and attacked the integrity of the Commission, bringing the administration of justice into disrepute.”⁹⁴

With respect to the civil contempt, the Court ordered that Mr. Dunlop be imprisoned for six months. If Mr. Dunlop purged his contempt prior to the end of that period, he could apply to the Court for an immediate release from custody. The Divisional Court further ordered that Mr. Dunlop appear before the Court upon the completion of the six-month sentence to be sentenced for criminal contempt.

Mr. Dunlop did not take the opportunity to purge his contempt, and on September 3, 2008, he was sentenced to a further thirty days incarceration for criminal contempt consecutive to his sentence for civil contempt.⁹⁵ At his initial request, Mr. Dunlop served much, if not all, of his sentence in protective segregated custody because of his status as a former police officer.

Throughout his time in custody, it was always open to Mr. Dunlop to agree to testify and thus to end his period of incarceration.

The Commission, parties, and, I think it fair to say, many members of the community were of the view that the evidence of Perry Dunlop would have assisted the Inquiry in completing its work. Unfortunately, we did not have the benefit of his testimony.

Notices of Alleged Misconduct

Given that one of the roles of an inquiry is to examine what happened and what went wrong, a Commissioner may well make findings in his report that will indicate wrongdoing on the part of an individual or institution.

The *Public Inquiries Act* provides: “No finding of misconduct on the part of any person shall be made against the person in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the inquiry to be heard in person or by counsel.”⁹⁶ The purpose of the notice is to provide the witness with a chance to respond to matters contained therein.

Because my mandate required me to inquire into and report on the institutional response of the justice system and other public institutions, I would make

93. *Ibid.* at, para. 16.

94. *Ibid.* at, para. 16.

95. Appendix N2d, *Cornwall (Public Inquiry) v. Dunlop* (2008), 241 O.A.C. 193 (Div. Ct.).

96. R.S.O. 1990, c. P41, s. 5(2).

findings of misconduct only in relation to those institutions and their employees and officials. When I had determined that I might make such findings, the goal was to serve the institutional witness with a notice of alleged misconduct before he or she testified. In most cases, we were successful on this front. Witnesses who were not served in advance still had the right to be heard and to address the matters raised in the notice.

Some notices were amended after witnesses testified. In a few cases, parties asked for more details of the alleged misconduct and, on occasion, notices of misconduct were slightly amended.

Consistent with long-standing public inquiry practice, the identity of any person served with a notice of alleged misconduct was confidential.

Hearing Room and Facilities

As I explained earlier, the Commission's offices and hearing room were located in a designated historic building, referred to as the Weave Shed, which had once served as a cotton mill. This building contained sufficient vacant space to accommodate all of the Commission's offices. Some renovations were required and as the building is a historic site, applications were required before any changes could be made to ensure that the proposed changes respected the property's heritage value. Along the way, we found that we needed to expand our office space to include more meeting rooms for counsel meetings, witness preparation, and witness support.

The Weave Shed also contained a small auditorium suitable for holding ninety to one hundred members of the public. This auditorium, the Weave Shed Arts Theatre, had once been used for live music and theatre performances. With some modifications, it became the hearings room.

To prepare this room for the hearings, very few structural changes were required. A dais was added to provide seating for me, as well as for the clerk and reporters. Counsel tables were also added. One room, which was adjoined to the hearings room, housed the documents and exhibits. Two additional rooms were constructed within the hearings room to accommodate the media and the interpreters. A table was added to facilitate the work of the audiovisual technician.

All counsel tables, my seat, and that of the witness, clerk, court reporters, interpreters, and media were equipped with monitors that displayed the exhibits electronically. Two large monitors positioned in front of the public seating area also permitted the public to view these documents. When documents were stored in SUPERText, the document management software program we used, they were assigned unique document and Bates page numbers. Counsel were required to refer

to documents by way of these unique identifiers. This was a bit of an adjustment for everyone, but it permitted the clerk to more easily locate the documents and display them on the monitors for all to see. On occasion, documents were not displayed on the public monitors due to confidentiality concerns.

A podium equipped with a microphone was placed at the front of the hearings room. It was only from this podium that counsel were permitted to communicate with me and examine witnesses.

A further use of the hearings room was to hold all counsel meetings. While at first these meetings were held in the boardroom in the Commission offices, the number of counsel soon exceeded the space. Counsel who were not able to attend in person were invited to do so by conference call.

These meetings were facilitated by Commission counsel to provide updates and discuss outstanding procedural issues. Prior to each meeting, an agenda would be circulated to the parties. For the most part, these meetings were useful in resolving matters without the need to take up valuable hearing time.

Records of the Proceedings

The Inquiry proceedings were recorded by two methods: the webcast and transcription.

From the webcast, a master set of tapes of the Inquiry proceedings and a CD copy set were retained by the Commission. The public and *in camera* tapes were stored separately. Over the course of the Inquiry, we received a number of requests for certain portions of the recorded webcast. Each request was considered individually and consistently by the Commission's Executive Committee. No requests were made for *in camera* sessions. In each case, the request was granted, with the requestor agreeing that the DVD copy was to be used only for research and review purposes and not to be rebroadcast or reproduced without obtaining the prior written permission of both the Commission and the witness, through the Commission. A fee was set that would cover the cost of the DVD plus time to duplicate.

The public and *in camera* tapes will be stored separately once archived, and the record schedules will identify whether they are public or *in camera* sessions. The *in camera* sessions will be archived with specific access instructions.

The Inquiry proceedings were transcribed daily by competent and dedicated court reporters. Like many of the counsel, they travelled from outside Cornwall to do their work in the hearings room. The transcripts were completed at the end of each day and posted to the Commission website. As with the tapes of the webcast, the transcripts of the public and *in camera* sessions were stored separately and will be archived in the same manner.

Conduct of the Hearings

Commissioner's Statements

As I indicated earlier, I did not give interviews to the media. I did make statements. The text of these statements was posted separately on the website, as well as being included in the body of the daily transcripts.⁹⁷ I made these statements at the start and finish of the Inquiry, before and after certain lengthy breaks, and regularly throughout to provide updates of our progress and roadmaps of our next steps. I also made statements to announce various Phase 2 work and updates.

Opening and Closing Statements

Parties were invited to provide written and oral opening statements. I asked that these statements outline the major principles that the parties submitted should guide the Inquiry process and the specific factual issues raised by the mandate.⁹⁸

The opening statements were delivered orally on October 3, 2006, and October 4, 2006. This was immediately prior to the calling of the first witness in the victim and alleged victim stage of the hearings. Commission counsel also provided an opening statement.

Parties were also invited to provide written and oral closing statements. The closing submissions would provide the parties with the opportunity to express their views on the key findings and conclusions that flowed from the evidentiary record as well as to suggest changes in policies and practices that could improve responses to allegations of abuse.

The amended Order-in-Council provided that the closing submissions were to be completed by February 27, 2009, less than one month after the conclusion of the evidentiary hearings. Working backward from this date, I asked that parties provide their written closing submissions by February 19, 2009.

On January 21, 2009, a motion was brought requesting that the deadlines for written and oral closing statements be extended by approximately one month. Many parties supported the motion, expressing concern that given the length of the Inquiry and the volume of materials to examine, there was not sufficient time to prepare comprehensive and thoughtful submissions.

I agreed to make a recommendation to the Attorney General on behalf of the parties that a thirty-day extension be granted to allow for the proper completion of the closing submissions. In my recommendation to the Minister, I indicated my view that the request for an extension was reasonable, particularly given the fact

97. These statements are also contained in Appendix P.

98. Appendix C4, Notice to Parties: Opening Statements, February 1, 2006.

that counsel had, out of necessity, focused their full attention on the hearing since the amended Order-in-Council.⁹⁹ The Attorney General denied the request.¹⁰⁰

Accordingly, closing submissions were delivered orally from February 23, 2009, to February 27, 2009. I asked parties to adhere to a two-hour time limit, although in scheduling, some parties were given less time based on the degree of their interests.

Party counsel worked tirelessly to complete written submissions in the time allowed. An extension would have been helpful for the parties and for me.

The written submissions were posted to the Commission's website. Parties were asked to create an executive summary of no more than ten pages to accompany their submissions. The executive summary, which was also posted on the website, was to assist the public in reviewing the submissions. Commission counsel did not provide a closing statement.

With respect to Phase 2, the public was also invited to provide written closing submissions. A total of fifteen individuals and organizations took this opportunity before the deadline of February 12, 2009.

Hearings Schedule

One of the realities of holding the Inquiry hearings in Cornwall was that most people had to travel. This would put a great toll on all concerned, from lawyers to interpreters and Commission staff. Knowing that this would not be a six-month Inquiry, I thought it best to begin by setting a pace that would permit those involved to be home on Fridays and travel on Mondays. Hearings generally ran for two consecutive weeks, followed by one week off. Issues would occasionally arise that would cause us to modify the schedule.

When setting this initial schedule, I was keeping in mind that travel wears people down. I was also keeping in mind the subject matter of the Inquiry. One of the important points learned from the experts was the effect of vicarious trauma. As explained so well by Dr. Peter Jaffe, one of the Commission's context-setting experts, professionals who work closely in the area of child sexual abuse, meeting with victims or investigating these matters, can be traumatized by the work. They may experience the same sense of depression, hopelessness, and helplessness that victims feel, and they may feel overwhelmed. As Commissioner, I considered it my responsibility to see to the mental and physical well-being of those testifying and also of those participating at the Inquiry as counsel and staff.

99. Appendix Q1, Letter, G. Normand Glaude, Commissioner, to the Honourable Chris Bentley, Attorney General, January 21, 2009.

100. Appendix Q2, Letter, Mark Leach, Assistant Deputy Attorney General, to G. Normand Glaude, Commissioner, January 26, 2009.

Accordingly, I chose to begin slowly and expected that the evidence would speed up once we got to the institutions. While it did, I found that in some cases institutional witnesses were fragile as well.

Beginning in mid-November 2007, once the evidence of victims and alleged victims was completed, we began to increase the sitting time, sitting five straight weeks until the Christmas break of that year. In 2008, we often sat five days per week rather than four, and in the summer of that year, I increased the number of consecutive hearings weeks.

During the fall of 2008, we received the amended Order-in-Council that required the evidence to be completed by January 30, 2009. While we had been working toward an end, this deadline forced the work of the Inquiry to move ahead at a rapid pace. We had virtually no breaks, and the hearings days were often extended into the evenings. This, I regret to say, was all too exhausting a pace for all concerned but was necessary to meet our new deadline.

Evidence and Examinations

Documents for the Parties and Hearings Room

Prior to a witness being called to testify, the parties would be provided with an AE and a list of documents. This was a relatively exhaustive list that included the set of documents used to prepare the witness, as well as those documents to which Commission counsel was likely to refer or to enter as exhibits during the examination-in-chief.¹⁰¹

In accordance with Rule 37, parties were required, at the earliest opportunity, to provide Commission counsel with any documents that they intended to file as exhibits or otherwise refer to during the hearings, and in any event, to do so no later than twenty-four hours prior to the day the document was to be referred to or filed.¹⁰²

Rule 38 stated that a party who believed that Commission counsel had not provided copies of relevant documents was required bring this to the attention of Commission counsel at the earliest opportunity. This was to prevent witnesses from being surprised with a relevant document that they had not had an opportunity to examine prior to their testimony. If Commission counsel decided the document was not relevant, it need not be produced. The document could still, however, be used in cross-examination by any of the parties. To do so, forty-eight hours notice was required.¹⁰³ In practice, counsel for the parties would submit a list of documents to which they expected to refer in the hearings room for the purposes of their

101. Appendix B, Rule 36.

102. *Ibid.*, Rule 37.

103. *Ibid.*, Rule 38.

cross-examination. Commission counsel would make their best efforts to ensure that the witness had reviewed all documents on both lists prior to testifying.

The lists of documents prepared by Commission counsel and counsel for the parties were compiled by the document management administrator and her staff. They worked very hard, on tight timelines, to prepare appropriate numbers of copies for the hearings room.

Because Commission staff prepared the documents, in practice, there was some overlap between Rules 37 and 38. The Commission generally required the parties to provide their lists of documents forty-eight hours in advance. In most cases, however, even if notice was provided twenty-four hours in advance, the documents would be prepared by Commission staff. If sufficient notice was not provided, the party was required to bring the necessary number of copies for use in the hearings room.

Nature of Examinations

RULES

Matters of evidence and procedure were covered in the Rules of Practice and Procedure.¹⁰⁴ In the ordinary course, Commission counsel called and questioned witnesses who appeared before the Inquiry. Commission counsel were permitted to adduce the evidence by way of leading and non-leading questions.

Following the examination-in-chief, parties with standing would then have the right cross-examine the witness to the extent of their interest. Early on in the hearings, the parties came to an agreement as to the order of cross-examination. From time to time, based upon the circumstances, the parties would agree to a variation of that order.

Counsel for a witness, regardless of whether or not that counsel was also representing a party, examined last.¹⁰⁵ Commission counsel then had the right to re-examine the witness.

For the most part, the process surrounding the examination of witnesses ran relatively smoothly. There were, however, a few issues that we addressed along the way.

Because of the number of parties, I insisted that parties strive not be duplicative in the cross-examination of a witness. We needed to use the hearings time efficiently and effectively, so if an area had already been covered by a previous party, I instructed counsel to move on to their next area.

104. *Ibid.*, Rules 12–45.

105. In accordance with Rule 12, counsel for a party may apply to the Commissioner for permission to lead a particular witness's evidence-in-chief. If permission was granted, counsel would have the right to re-examine the witness. This did not happen during the course of the Inquiry.

Another area that deserves noting relates to the right of a party to examine its own witness. As I just indicated, counsel for a witness examined last. From time to time, counsel took this to mean that they were entitled to cross-examine their own witness. This was based on the notion that all of the witnesses were the Commission's witnesses because they were leading the evidence. When this was argued, I permitted counsel for parties to ask leading questions of their own clients, but advised that I would give the evidence less weight. This occasionally lengthened the examinations.

In hindsight, the rule on examination of one's own witness should have been more explicit. I thought that it was clear, as I know of no judicial or quasi-judicial proceedings in which counsel have the right, except in specific circumstances such as a hostile witness, to cross-examine their own client(s). Given the extra time this took and the extremely limited value of the answers, I recommend that future inquiries state very clearly in their Rules that no matter who actually leads the evidence of the witness, counsel for that party and/or witness not be allowed to cross-examine in such circumstances.

DIRECTIONS ON PROCESS

Public inquiries are not intended to be adversarial in nature. Despite this, at times, they take on an adversarial tone. I think this is probably inevitable. While Commissioners cannot make any findings of civil or criminal liability, they may make findings of misconduct. Reputations may be tarnished, and counsel for parties are entrusted with protecting the reputations of their clients.

The adversarial tone I speak of plays out in the hearings room, where witnesses are examined and cross-examined. For any witness, this may be difficult, but it may be acutely difficult for a victim or alleged victim of child sexual abuse. It was important for me that the Inquiry proceed in a way that respected the challenges associated with testifying, and helped to minimize the possible negative effects, all the while ensuring that the principles of fairness were met.

Accordingly, following a cross-examination that was particularly difficult for a witness, I considered it important to issue some directions on our process. I set out the following process obligations:¹⁰⁶

Witnesses

- Witnesses will be asked to cover more areas in their examination-in-chief.
- Witnesses should be given in advance the documents that will be used in cross-examination, in order to maximize their comfort level.

106. Appendix K18, Directions on Process, February 20, 2007.

- Witnesses need to spend more time with Commission counsel to review the vast number of documents related to them.

Parties

- Counsel should focus on the issues that pertain to institutional responses as they affect their clients.
- Counsel for the parties will need to be more specific about the areas to be covered in cross-examination.
- Full adherence to the Rules of Practice and Procedure is required. Parties must provide their lists of documents in a timely fashion to permit an opportunity for witnesses to review them.
- Counsel needs to be prepared to explain the relevance of cross-examination and why it is needed when asked by the Commissioner or as a result of an objection.
- Counsel should exercise discretion and good judgment in deciding to address personal opinions or impressions, and if they do so, to focus on the underlying reasons for the opinion or impression.

Commission counsel

- Commission counsel must lead more of the evidence in examination-in-chief and anticipate questions on cross-examination.
- Given that the parties will be providing more documents in advance, Commission counsel should review these documents with witnesses prior to their taking the stand.
- Commission counsel must carefully monitor to ensure that questions posed to the witnesses are relevant.

In this ruling, I indicated that I would be vigilant in ensuring that the process was fair to all concerned, which might necessitate greater intervention than I had made in the past.

I also indicated that I would be clearer on the scope of the permitted examination.

RECOMMENDATIONS FROM WITNESSES

I wanted to hear all perspectives and insights as to the operation of the justice system and involved public institutions. To help gather this information, Commission counsel made it a practice to ask all witnesses at the end of their examination-in-chief whether, based on their own experiences, they had any recommendations for me to consider in preparing my Report. I found many witnesses to be very thoughtful in their responses to this question.

Confidentiality Issues

As at the disclosure stage, addressing confidentiality issues in the hearings room was an important, but time-consuming, part of the Commission's work.

The Order-in-Council (April 14, 2005) provides: "The Commission shall ensure that the disclosure of evidence and other materials balances the public interest, the principle of open hearings, and the privacy interests of the person(s) affected, taking into account any legal requirements."¹⁰⁷ This balancing exercise posed unique and ongoing challenges. Public inquiries, by their very nature, are intended to be open and public, but there are limits. This is recognized in section 4 of the *Public Inquiries Act*.¹⁰⁸

As the hearings proceeded, we encountered a number of confidentiality related issues.

PRE-EXISTING PUBLICATION BANS

There were pre-existing publication bans that arose from previous court proceedings. These publication bans limited the information, mainly the names of victims and alleged victims of child sexual abuse, that could be made public. We were, of course, obliged to respect those bans within the context of the Inquiry process. In several cases, however, witnesses who were victims or alleged victims wished to have the ban on their names lifted. The Ministry of the Attorney General with the assistance of Commission counsel brought motions to the Ontario Superior Court of Justice to have these bans lifted.

YOUTH CRIMINAL JUSTICE RECORDS

As was mentioned earlier, there were also records subject to the provisions of the *Youth Criminal Justice Act*. To use these documents in the hearings room, motions were brought jointly by the Commission and the Ministry of the Attorney General. The consent of the individual to whom the records pertained was required. Orders were granted providing that the relevant records could be used for the purpose of the Inquiry, including being tendered as evidence for the public record of the proceedings.

CONFIDENTIALITY MEASURES FOR WITNESSES AND OTHERS

The Commission's Rules of Practice and Procedure set out Rules to address issues of confidentiality.¹⁰⁹ Rule 39, for example, provided that I might:

107. Appendix A1.

108. R.S.O. 1990, c. P41, s. 4.

109. Appendix B, Rules 39–45.

... conduct hearings in private, and/or issue orders prohibiting the disclosure, publication, broadcast or communication of any testimony, document or evidence, when ... [I was] of the opinion that intimate medical or personal matters, or other matters, ... [were] of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public.¹¹⁰

In dealing with issues relating to the non-publication of certain information, I applied the *Dagenais/Mentuck* test as set out by the Supreme Court of Canada.¹¹¹

The Commission's Rules also provided that a witness could apply for measures aimed at protecting his or her identity.¹¹² When I agreed that some form of confidentiality measure was appropriate, the usual course was to identify the witness by a moniker.

Because the issue of the protection of the names of victims and alleged victims, some of whom had never come forward to the Commission, was raised on a number of occasions, I issued some directions on process.¹¹³ These directions applied to the following scenarios:

1. requests for confidentiality made on behalf of victims or alleged victims who had specifically communicated that they did not want their identities to be made public; and
2. requests for confidentiality on behalf of victims or alleged victims who had not communicated, whatever the reason, that they did not want their identities to be made public.

In that ruling, I indicated that I saw no reason to limit the application of the Commission's confidentiality rules solely to the situation of a witness seeking confidentiality. In my view, section 3 of the *Public Inquiries Act* and section 6 of the Order-in-Council were broad enough to authorize similar orders applicable to persons other than witnesses. Accordingly, on occasion, monikers were also granted to protect the confidentiality of individuals who were not witnesses but who fit the categories listed above.

110. *Ibid.*, Rule 39.

111. *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835; *R. v. Mentuck*, [2001] 3 S.C.R. 442. Summarized in *Toronto Star Newspapers Ltd. v. Ontario*, [2005] 2 S.C.R. 188 at paras. 9, 10, and 26–31.

112. Appendix B, Rule 40.

113. Appendix K14.

A list of monikers was available in the hearings room for counsel to ensure that confidentiality was maintained. 133 monikers were issued over the course of the Inquiry. On the very few occasions on which counsel inadvertently mentioned the name of a monikered witness, the transcript was corrected to reflect the moniker. Unfortunately, nothing could be done to correct the webcast. I understand that in the recent Inquiry into Pediatric Forensic Pathology in Ontario,¹¹⁴ the webcast operated on a slight delay, permitting the registrar to cut transmission when counsel misspoke and mentioned a name that had confidentiality measures attached to it. I highly recommend this for all future inquiries using a webcast.

I also granted the request of some witnesses to testify in private. There was some variation in terms of what “in private” meant. Some witnesses wished to testify completely in private. When I agreed that this was appropriate, the public would be excluded from the hearings room and the webcast would be shut down. There were several cases in which the witness was comfortable with the audio stream of the webcast being on but not the video stream, and I accommodated this request.

Two motions were brought to restrict the publication of the names of certain individuals against whom allegations of sexual abuse had been made.¹¹⁵ In each instance, I refused to grant the publication ban, although in the interest of fairness, in one case, I issued a temporary publication ban pending the outcome of a judicial review and appeal. My decision was upheld by the Divisional Court and the Ontario Court of Appeal and as a result the temporary ban was lifted.¹¹⁶ The local media were advised of upcoming requests for publication bans so that they would have the opportunity to participate should they so choose.

ACCESS TO EVIDENCE

The Rules provided that all evidence be categorized and marked P for public sittings and, if necessary, C for sittings *in camera* and/or under a publication ban.¹¹⁷ Motions were brought to limit public access to, or impose confi-

114. The Honourable Stephen T. Goudge, Commissioner, *Inquiry into Pediatric Forensic Pathology in Ontario Report*, vol. 4, *Policy and Recommendations* (Toronto: Ministry of the Attorney General), p. 659.

115. Appendix K16, Ruling on an Application for Confidentiality Relating to the Identity of Father Charles MacDonald, November 17, 2006; Appendix K17, Reasons in Respect of an Application for Confidentiality Relating to the Identity of the Moving Party, November 28, 2006.

116. Appendix L2, *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall (Public Inquiry)* (2006), 219 O.A.C. 58 (Div. Ct.); Appendix M1, *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall (Public Inquiry)* (2007), 219 O.A.C. 129 (C.A.).

117. Appendix B, Rule 26.

dentiality measures in respect of, certain documents filed as exhibits before the Commission.¹¹⁸

Witnesses could also request to testify before the Commission in private. In some instances, I allowed witnesses to testify *in camera*. In these circumstances, the webcam was turned off and the public, other than members of parties that had signed undertakings, was excluded from the hearings room. Several witnesses were willing to testify in the open hearings room but requested that the camera be turned away from them. I granted this request.

Alternative Processes

There were two witnesses who began but were unable to complete their testimony before the Inquiry.

DAVID SILMSER

Mr. David Silmsier is an individual who made allegations of child sexual abuse against a Catholic priest, a probation officer, and a teacher. Given the pivotal role that his settlement played in the events in Cornwall and the questions surrounding that settlement, as well as his interaction with various other public institutions, Mr. Silmsier was an important witness for the Commission to hear from.

Mr. Silmsier completed his examination-in-chief and started his cross-examination. As it was underway, Mr. Silmsier left the stand and did not return due to medical reasons. Five parties had not yet had the opportunity to complete their cross-examination of Mr. Silmsier. Much discussion ensued over how to proceed. Given the unlikelihood that Mr. Silmsier could return to complete his cross-examination, the parties fashioned an alternative process whereby they would essentially provide an oral narrative, referring to documents where appropriate, of the areas on which they would have cross-examined Mr. Silmsier.

As the alternative process was to begin, Mr. Silmsier sent a letter that was addressed to me. The letter was distributed to counsel for the parties, and I heard submissions as to whether I should read the letter and what the next steps should

118. Appendix K4, Ruling on the Motion for an Order to Remove Commission Exhibits From the Cornwall Public Inquiry Website or, in the Alternative, an Order to Redact Portions of Them, June 6, 2006; Appendix K15, Public Ruling on Confidentiality Measures for Exhibits Marked as “C” on an Interim Basis, November 16, 2006. Also see Appendix L3, *Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry v. Cornwall (Public Inquiry)* (2007), 223 O.A.C. 66 (Div. Ct.), in which the Divisional Court ruled that I erred in my decision that certain portions of two exhibits need not be subject to a publication ban even though they contained information that paralleled that contained in the Child Abuse Register.

be. Some of the parties argued that Mr. Silmsner's letter raised a number of possibilities: expunging Mr. Silmsner's evidence; asking Mr. Silmsner to reattend; or continuing with the alternative process as planned. I ruled that the best option was to proceed with the alternative process.¹¹⁹ Mr. Silmsner's medical documentation indicated that his appearance to give evidence had worsened his condition and further participation carried a risk of harm. His letter, in my view, reinforced this point. Given all the circumstances and the importance of his evidence, expunging it would have been a great shame. Thus, the alternative process was the best option we had. Hearings time was set aside for this process. At the conclusion of the process, parties still had the opportunity to request that Mr. Silmsner's evidence be expunged. No one did.

While not ideal, the alternative process gave counsel for the affected parties an opportunity to provide their submissions on Mr. Silmsner's testimony and to give examples of areas they would have covered with the witness.

RON LEROUX

Mr. Ron Leroux made allegations of child sexual abuse against a number of individuals, including Catholic priests, a bishop, a probation officer, and other community members. One of the alleged victims, C8, testified that he was abused by Mr. Leroux. Mr. Leroux, like Mr. Silmsner, completed his examination-in-chief. While being cross-examined by the first party to do so, Mr. Leroux brought a motion asking to be excused from continuing his testimony for medical reasons and the effect that continuing to testify would have on him. I was satisfied with the medical evidence and excused Mr. Leroux from having to give further testimony before the Inquiry.¹²⁰ A slightly different alternative process was implemented. Counsel were required to prepare a written outline of the areas they intended to cover with the witness. This was then presented orally.

I found it very unfortunate that two significant witnesses were unable to complete their testimony due to medical reasons. As noted, *viva voce* evidence is preferable.

Similar medical problems existed for important institutional witnesses, such as Sergeant Ron Lefebvre and Constable Heidi Sebalj of the Cornwall Police Service, Ron Wilson of the Cornwall Police Service and the Cornwall Police Services Board, Monsignor McDougald and Father Paul Lapierre of the Diocese of Alexandria-Cornwall, and Detective Constable Don Genier of the Ontario Provincial Police.

119. Appendix K21, Ruling in Relation to Mr. Silmsner's Evidence, March 29, 2007.

120. Appendix K25, Ruling on a Motion Seeking That Mr. Leroux Be Excused From Continuing His Testimony Before the Inquiry, September 10, 2007.

Phase 1 Research

Research of several different types was undertaken during the course of the Cornwall Public Inquiry. Contextual research was undertaken in Phase 1. Research papers were prepared by experts with relevant academic and research experience. These papers were intended to assist me in understanding and analyzing the complex and systemic issues that arose in fulfilling my mandate, inform me about the policies and practices of other jurisdictions, and provide certain context for evidence heard in Phase 1 of the Inquiry.

Research was commissioned on the following topics:

- a survey of policies and practices with respect to police responses to complaints of child sex abuse and complaints by adults of historical sexual abuse;
- a survey of policies and practices with respect to child welfare/protection/Children's Aid Society (CAS) responses to complaints of child sexual abuse and complaints by adults of historical childhood sexual abuse when the alleged abuser may have continued contact with children;
- a survey of policies and practices of government or government agency officials with respect to responses to complaints of child sexual abuse and complaints of historical sexual abuse of young persons in the context of provision of government services to young persons, whether those services are provided by employees or volunteers; and
- a survey of policies and practices with respect to response by religious institutions to complaints of child sexual abuse and complaints by adults of historical childhood sexual abuse.

Parties to the Inquiry were given the opportunity to participate in the research agenda. The parties were consulted both in the drafting of the research plan and in the retention of experts. Draft papers were circulated to parties when received, and comments received from the parties were provided to the experts for consideration in finalizing the reports.

Costs

I was always mindful that a public inquiry is an expenditure of public funds. It is in the public interest to manage the costs, while still ensuring that the inquiry is thorough and fulfils its mandate. Justice Linden stated the following about his work on the Ipperwash Inquiry:¹²¹

121. The Honourable Sidney B. Linden, Commissioner, *Report of the Ipperwash Inquiry*, vol. 3, *Inquiry Process* (Toronto: Ministry of the Attorney General, 2007), p. 14.

Ultimately, this Inquiry would be measured by its success in meeting its dual mandate of fact finding and making recommendations for the future. However, it was also inevitable and even justifiable that the assessment would take into account the time taken and the costs incurred.

While I, too, hope that this Inquiry will be judged by its findings and recommendations, I expect that the time taken and the costs incurred will not go unnoticed.

This Inquiry had a number of unique features that contributed to additional costs. These features include, but are not limited to, the following:

- Because of the bilingual nature of the community of Cornwall and the participants in the Inquiry, simultaneous interpretation was provided.
- Counselling and witness support programs were recommended from early on in the Inquiry process. In my view, these programs were essential, and the extent to which they were used is a testament to their necessity.
- Additional time was required for the preparation and testimony of vulnerable persons, such as victims and alleged victims, their family members, and some institutional officials who were obviously affected by their involvement in the matters being examined by this Commission.
- As discussed earlier, the subject matter of the proceedings lent itself to additional litigation, and time was required for preparation for motions, judicial reviews, and appeals.
- Additional travel and related expenses were incurred because the Commission offices and hearings room were both located in Cornwall. As I stated earlier, I thought it was important for the Commission offices to be located in Cornwall so that we were accessible to the community. This is unlike the Walkerton and Ipperwash inquiries, each of which had separate Commission offices in Toronto. As a result, when those hearings were not in session, no travel was required.
- The broad scope of the Commission's mandate, including that the alleged institutional response issues spanned decades, resulted in the disclosure of a large volume of documents. Costs were associated with organizing and compiling these documents in a manner that would make them most useful.
- A further consequence of the broad mandate was the need to call a fairly significant number of witnesses. While some may criticize the number of witnesses who were called, it is important to note that there were many more individuals who wanted to testify. Commission

counsel had to screen out witnesses who were not considered absolutely necessary to the mandate.

- The large number of parties also contributed to the expense of the Inquiry. Some may say that I allowed too many parties to participate. Having said this, I applied long-standing legal tests on standing applications. Parties met those standards. In my view, it is not a question of too many parties but another indication of the broad mandate of the Order-in-Council.

I had hoped that this Inquiry would take less time and use fewer financial and human resources, but I had made a commitment to look at the facts and issues thoroughly. Increased time and costs are a natural consequence of a public inquiry with the unique features I have described.

Report

The original Order-in-Council establishing the Cornwall Public Inquiry did not contain a date for the delivery of my final Report. We nonetheless went about the work of the Inquiry as quickly and efficiently as possible, all the while keeping in mind the need to be thorough. On October 22, 2008, the Order-in-Council was amended to include a firm end date to the work of the Inquiry.¹²² It directed that all evidence must be received by no later than January 30, 2009. All other activities, with the exception of counselling support in place as of the date of the Order, must also conclude by January 30, 2009. Closing submissions were to be completed by February 27, 2009, and the report delivered by no later than July 31, 2009.

In accordance with this, on February 27, 2009, the final closing submissions from the parties were delivered and I made some brief closing comments. In some ways, my work was just beginning, or at least a new chapter of it was beginning. My full attention could now be given to the actual writing of the Report.

The Order-in-Council required the Commission to ensure that the Report would be available in both English and French and that sufficient copies of the Report were prepared. The Report also had to be available in electronic form.

The Report is the culmination of the work of the Inquiry. By the end, we had completed 353 hearing days, heard from 177 witnesses,¹²³ and amassed approximately 3,500 exhibits. There was a significant amount of evidence to weigh and consider in writing my Report and making recommendations.

122. Appendix A2, Order-in-Council 1787/2008, October 22, 2008.

123. This number also includes the twelve overviews of documentary evidence that were prepared by Commission counsel. See Appendix E, Witness List.

Writing would take time. On top of this, we would need to set aside adequate time for translation and production. Delivering a comprehensive Report by July 31, 2009, was unrealistic. As a result, I requested an extension for the delivery of my Report until at least October 31, 2009. An extension was granted until October 15, 2009.¹²⁴ A final delivery date of December 15, 2009 was set by Order-in-Council.

In the past, most commissions of inquiry were not given completion dates by governments. More recently, completion dates have been set out in some Orders-in-Council. In this case, the completion dates were imposed part way through the hearing. While the government is free at all times to set dates for the completion of an inquiry, or part thereof, it is preferable that such dates be set out in the Order-in-Council establishing the inquiry.

Wrapping Up

A commission of inquiry is a temporary body. At its conclusion, the infrastructure that is put in place to make it operational must be carefully dismantled.

Our temporary home in the Weave Shed had to be left as we had found it. This required the transfer of office equipment and furniture to other locations and the termination of services such as phone and Internet.

Contracts for service providers were ended, although some new, short-term contacts were necessary for matters related to the production of the Report.

Inquiry records had to be prepared for transfer to the Archives of Ontario. This involved cataloguing, creating record schedules, and determining public access.

The Commission's website will remain operational for a period of two to three months after the release of my Report. It will then be decommissioned and transferred to the Ministry of the Attorney General server. The Commission's website, which will also include the Report, will then be available through the Ministry's website.

124. Appendix A3, Order-in-Council 1247/2009, July 15, 2009.

Recommendations

Resolution of Interlocutory Matters

1. The *Public Inquiries Act* should be amended to include a mechanism whereby interlocutory matters, including issues related to solicitor–client privilege, can be resolved expeditiously. This was a recommendation made by Justice Bellamy in the context of the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry, and I agree with her entirely.

Production of Documents

2. The *Public Inquiries Act* should be amended to formalize the power to summons the production of documents without the need for attendance by a witness. This is also a recommendation made by Justice Bellamy that I support.

Funding for Judicial Review Applications

3. The Ministry of the Attorney General should develop a process to assess funding applications with respect to judicial reviews made by funded parties in an inquiry.

Examination of Witnesses

4. An inquiry's Rules of Practice and Procedure should be clear in providing that counsel for a witness is not permitted, except with permission of the Commissioner, to cross-examine his or her own client(s), no matter who actually leads the evidence of the client/witness.

The appendices contain the full text of some of the documents relevant to this Inquiry, provided on the CD that accompanies this volume. The following is a list of these supplementary materials, grouped by provenance.

A ORDERS-IN-COUNCIL

- 1 Order-in-Council 558/2005, April 14, 2005
- 2 Order-in-Council 1787/2008, October 22, 2008
- 3 Order-in-Council 1247/2009, July 15, 2009
- 4 Order-in-Council 1682/2009, October 14, 2009

B RULES OF PRACTICE AND PROCEDURE (AMENDED SEPTEMBER 29, 2006)

C NOTICES

- 1 Notice of Hearing
- 2 Notice: Hearings Set for Applications for Standing and Funding
- 3 Notice to Parties: Amendment to Rules of Practice and Procedure, January 16, 2006
- 4 Notice to Parties: Opening Statements, February 1, 2006
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- 2 *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall (Public Inquiry)* (2006), 219 O.A.C. 58 (Div. Ct.)
- 3 *Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry v. Cornwall (Public Inquiry)* (2007), 223 O.A.C. 66 (Div. Ct.)
- 4 *Ontario (Provincial Police) v. Cornwall (Public Inquiry)* (2007), 229 O.A.C. 238 (Div. Ct.)

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N DECISIONS RELATING TO PERRY DUNLOP

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- b *The Honourable G. Normand Glaude, Commissioner of the Cornwall Public Inquiry v. Perry Dunlop and Helen Dunlop* (August 27, 2007), Vancouver, S075758 (BC S.C.)
- c *The Honourable G. Normand Glaude, Commissioner of the Cornwall Public Inquiry v. Perry Dunlop and Helen Dunlop* (October 5, 2007), Vancouver, S075758 (BC S.C.)
- 2 Stated Case and Contempt Proceedings
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 - b *Cornwall (Public Inquiry) v. Dunlop* (2008), 165 A.C.W.S. (3d) 652 (Ont. Div. Ct.)
 - c *Cornwall Public Inquiry (Commissioner of) v. Dunlop* (2008), 90 O.R. (3d) 524 (Div. Ct.)
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O OTHER ORDERS

- 1 *Attorney General and The Cornwall Public Inquiry v. John Does* (July 25, 2006), Toronto (Ont. C.J.)

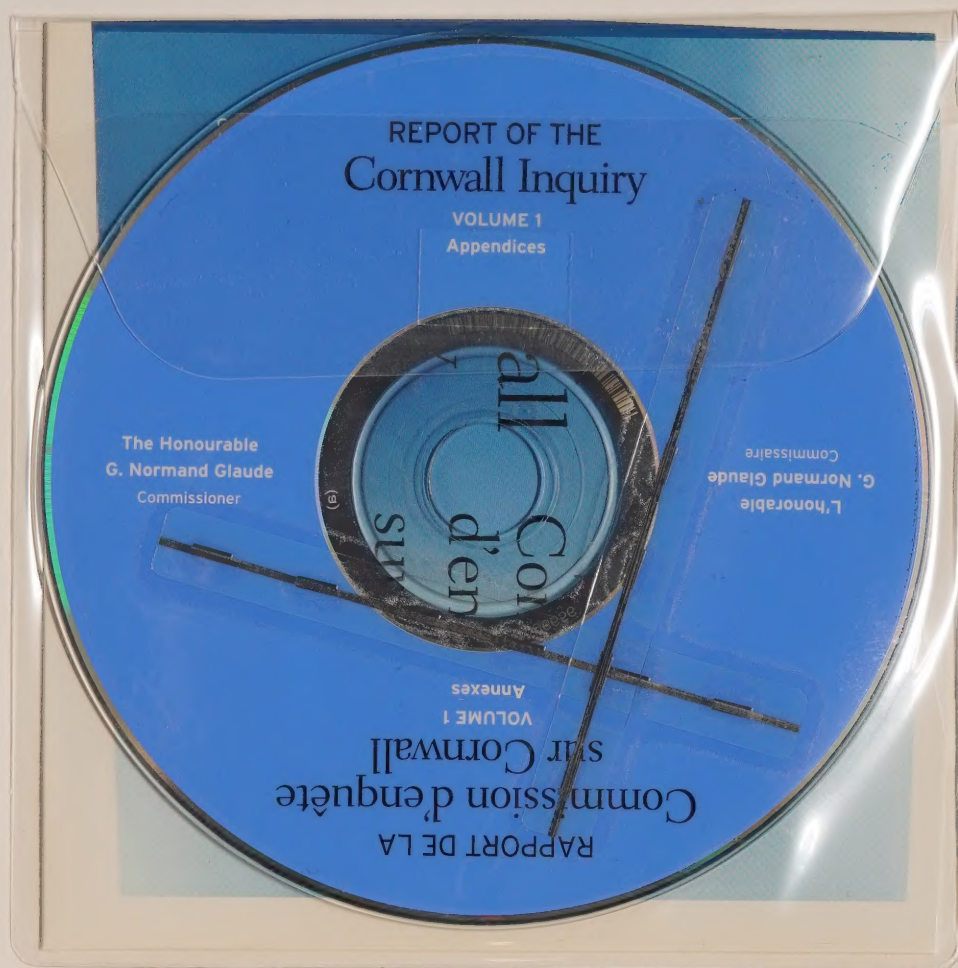
P COMMISSIONER'S STATEMENTS

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- 12 Further Update on Completed Work and the Work Scheduled for 2007, September 17, 2007
- 13 Commissioner's Speech at "Focus on Prevention and Community" Phase 2 Meeting, October 18, 2007
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- 22 Closing Remarks for Phase 1 Submissions, February 26, 2009
- 23 Closing Remarks for Phase 2 Submissions, February 27, 2009

Q LETTERS

- 1 G. Normand Glaude, Commissioner, to the Honourable Chris Bentley, Attorney General, January 21, 2009
- 2 Letter, Mark Leach, Assistant Deputy Attorney General, to G. Normand Glaude, Commissioner, January 26, 2009



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